STATE OF MINNESOTA DISTRICT COURT

COUNTY OF RAMSEY SECOND JUDICIAL DISTRICT

- -

The State of Minnesota,
by Hubert H. Humphrey, III,
its attorney general,
and
Blue Cross and Blue Shield
of Minnesota,

Plaintiffs,

vs. File No. C1-94-8565

Philip Morris Incorporated, R.J.
Reynolds Tobacco Company, Brown
& Williamson Tobacco Corporation,
B.A.T. Industries P.L.C., Lorillard
Tobacco Company, The American
Tobacco Company, Liggett Group, Inc.,
The Council for Tobacco Research-U.S.A.,
Inc., and The Tobacco Institute, Inc.,

Defendants.

- -

DEPOSITION OF THOMAS S. OSDENE, Ph.D.

Volume II, Pages 105 - 268

http://legacy.library.ucsf.edu/tid/wmp05a00/pdf Source: www.tobaccoindustrydocuments.ucsf.edu/docs/pyhd0001

(The following is the Deposition of THOMAS S. OSDENE, Ph.D., taken pursuant to Notice of Taking Deposition, by videotape, the Honorable Kenneth J. Fitzpatrick presiding via teleconference, at the offices of Hunton & Williams, Attorneys at Law, Riverfront Plaza, East Tower, 951 East Byrd Street, Richmond, Virginia, on June 17, 1997, commencing at approximately 9:41 o'clock a.m.)

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00:00:00 P R O C E E D I N G S

00:00:32 MR. GORDON: It's my understanding that Mr. Webb has an issue he wishes to raise before the court.

00:00:38 MR. WEBB: Your Honor, as we start the deposition today, I'd like to raise an issue with you. My name is Dan Webb and I'm an attorney for Philip Morris. I apologize for my cold. I hope you hear me okay. I'd like to raise an issue with the court that has caused pretty grave concern inside Philip Morris this morning and they asked me to raise this issue with Your Honor.

00:01:00 As Your Honor is aware, Your Honor signed an order that placed this sensitive deposition under seal for 30 days, and this morning it's been called

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00:01:10 16 to my attention that in the newspaper, the Richmond
00:01:16 17 Times-Dispatch, today's edition, on page A10, there
00:01:22 18 is a story that is headlined "Ex-research director is
00:01:26 19 said to plead Fifth again." It's a story by a
00:01:30 20 reporter by the name of Chip Jones, a Times-Dispatch
00:01:34 21 staff writer, and I'll read the first two paragraphs
00:01:38 22 so Your Honor understands what our concerns are.
00:01:42 23 The first two paragraphs of the story I'll read
00:01:46 24 as follows. "The former director of Philip Morris'
00:01:52 25 USA's Richmond research center exercised his right

00:01:56 1 against self-incrimination yesterday during pretrial
00:02:00 2 questioning by lawyers from Minnesota and
00:02:06 3 Pennsylvania according to informed sources."
00:02:12 4 Next paragraph: "Dr. Thomas S. Osdene asserted
00:02:16 5 his Fifth Amendment privilege during the morning
00:02:20 6 session at the Richmond law firm Hunton & Williams,
00:02:22 7 sources said."
00:02:24 8 Next paragraph: The retired Philip Morris
00:02:28 9 vice president took the same position in mid-May when
00:02:32 10 questioned by lawyers represented -- representing the
00:02:34 11 state of Texas.
00:02:36 12 Judge, the article goes on for several more
00:02:40 13 columns with essentially a story, but those first
00:02:42 14 three paragraphs clearly set forth what our concern
00:02:48 15 is, that it appears that someone who was an informed
00:02:52 16 source went to the press yesterday and violated your
00:02:56 17 seal order, and it seems to me that we should begin
00:03:00 18 the deposition today -- (cough) excuse me -- by going

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00:03:04 19 around the table, and I guess I would ask Your Honor
00:03:08 20 as the person who entered the seal order to simply
00:03:10 21 have all of us that were in the room yesterday state
00:03:14 22 as officers of the court to you what we know about
00:03:22 23 any contact by Chip Jones or any other reporter with
00:03:26 24 our clients, with us or anyone else we know of and
00:03:30 25 see whether or not there is any way that we could try

00:03:32 1 to get to the bottom or at least begin what may be
00:03:36 2 some type of inquiry, hopefully by the court, to find
00:03:38 3 out what happened here.
00:03:40 4 Obviously we are very concerned about it and we
00:03:44 5 would like to make that suggestion to the court as
00:03:46 6 the probable -- the best way to proceed at this point
00:03:48 7 at the beginning.
00:03:50 8 THE COURT: All of the people that are
00:03:54 9 present this morning, are they the same personnel
00:03:56 10 that were present yesterday?
00:03:58 11 MS. FUCHS: I was not here yesterday, Your
00:04:02 12 Honor. Jeff Weil from Dechert Price & Rhoads was
00:04:04 13 here instead.
00:04:06 14 MR. DOUGLAS: This is Cliff Douglas. I was
00:04:08 15 not present yesterday.
00:04:10 16 THE COURT: Is there anyone that was
00:04:14 17 present yesterday that is not present today with that
00:04:16 18 one exception?
00:04:20 19 MR. WEBB: I think Mr. Jeff Weil is the
00:04:22 20 only one who was present yesterday who is not present

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00:04:24 21 here today, Your Honor.

00:04:26 22 Oh, Tim -- I'm sorry, I'm sorry, Your Honor.

00:04:30 23 There is a Tim O'Connor who is an associate from our

00:04:34 24 law firm in Chicago, Winston & Strawn. Mr. O'Connor

00:04:38 25 is also not here today.

00:04:40 1 THE COURT: All right. Can we go through

00:04:44 2 the process and have each person that is present

00:04:48 3 identify themselves by name. This includes both

00:04:54 4 counsel, reporter, witnesses and observers, and

00:05:00 5 identify -- make a statement to the court as was

00:05:04 6 requested with respect to any contact or any

00:05:08 7 knowledge regarding the newspaper article by Chip

00:05:12 8 Jones. And can we do that in sequence.

00:05:14 9 MR. GORDON: Your Honor, this is Corey

00:05:16 10 Gordon on behalf of the plaintiffs state of Minnesota

00:05:20 11 and Blue Cross and Blue Shield of Minnesota, and I

00:05:22 12 can represent to Your Honor that no one, and I

00:05:26 13 emphasize no one, associated with the state of

00:05:30 14 Minnesota or Blue Cross/Blue Shield disclosed in any

00:05:32 15 fashion or any manner anything about the deposition

00:05:38 16 yesterday. There was no contact with the press from

00:05:40 17 the state of Minnesota, Blue Cross/ Blue Shield's

00:05:42 18 standpoint.

00:05:46 19 MR. SHUB: Your Honor, this is Jonathan

00:05:48 20 Shub from the Arch case in Pennsylvania. There has

00:05:50 21 been no contact with any reporters from the Richmond

00:05:52 22 Times or otherwise in connection with this

00:05:54 23 deposition.

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00:05:58 24 MR. DOUGLAS: This is Cliff Douglas, Your
00:06:00 25 Honor. Again I was not present yesterday and know

00:06:02 1 nothing of the matter.
00:06:06 2 MS. De KOCK: This is Paola De Kock, from
00:06:08 3 Debevoise & Plimpton, on behalf of the Council for
00:06:12 4 Tobacco Research. I had no contact with the press.
00:06:14 5 MS. FUCHS: This is Ronni Fuchs from
00:06:16 6 Dechert Price & Rhoads, we represent Philip Morris in
00:06:20 7 the Arch matter, and I know of no contact with the
00:06:20 8 press.
00:06:24 9 MR. NUNLEY: Judge Fitzpatrick, this is
00:06:24 10 Chip Nunley from Hunton Williams. Yesterday
00:06:26 11 afternoon at about -- actually, I don't remember the
00:06:30 12 time but sometime early in the afternoon I had a call
00:06:32 13 from Mr. Jones. He asked me whether I could comment
00:06:36 14 on the Osdene deposition. I told him I was in no
00:06:40 15 position to do that and referred him to Mike York at
00:06:42 16 Philip Morris, and that was the extent of my contact
00:06:42 17 with Mr. Jones.
00:06:46 18 MR. WEBB: Your Honor, Dan Webb, Winston &
00:06:46 19 Strawn, on behalf of Philip Morris.
00:06:48 20 THE COURT: Just a minute. Before -- Just
00:06:50 21 a minute. Before we leave that, you referred him to
00:06:50 22 whom?
00:06:54 23 MR. NUNLEY: Mike York at Philip Morris.
00:06:58 24 THE COURT: Did Mike York have a
00:07:00 25 conversation with Chip Jones?

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00:07:02 MR. NUNLEY: I think Mr. Webb can address
00:07:04 that, Your Honor. We looked into that this morning.
00:07:06 THE COURT: Go ahead.
00:07:08 MR. WEBB: Dan Webb on behalf of Philip
00:07:12 Morris. I or no one from my law firm had any contact
00:07:14 with the press whatsoever. Upon learning about this,
00:07:18 I contacted Philip Morris and talked directly with
00:07:20 Mr. York. Mr. York is a public relations person for
00:07:22 Philip Morris.
00:07:24 Mr. York related to me this morning that he
00:07:28 received a phone call yesterday from Chip Jones and
00:07:32 he told Chip Jones the truth, which is that he didn't
00:07:34 even have any idea that Osdene was even being
00:07:38 deposed, period, end of matter, and he never gave him
00:07:42 -- he didn't even confirm there had been a
00:07:44 deposition yesterday, so he in no way communicated
00:07:46 any information at all to Mr. Jones, period.
00:07:52 MR. NUNES: Good morning, Your Honor. Gary
00:07:56 Nunes of Howrey & Simon, representing Tom Osdene.
00:07:58 Yesterday at about three o'clock or three
00:08:02 thirty, I received a phone message from Chip
00:08:08 Jones. . I returned the call, got his voice mail,
00:08:10 left a message that I was returning his call. He
00:08:12 then returned my call probably an hour later. I was
00:08:14 unavailable and did not return that call, and I had

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00:08:16 1 no conversation with Mr. Jones.
00:08:18 2 MR. NIELDS: Good morning, Your Honor.
00:08:22 3 John Nields from Howrey & Simon, also representing
00:08:28 4 Dr. Osdene. I had no contact with any news person at
00:08:30 5 all concerning the deposition and I'm quite certain
00:08:34 6 that no one in my law firm did.
00:08:36 7 THE WITNESS: Your Honor, this is Tom
00:08:42 8 Osdene. I left the law offices of Hunton Williams at
00:08:46 9 one o'clock yesterday after lunch. Within one hour
00:08:48 10 and fifteen minutes, I received a phone call from
00:08:54 11 Chip Jones asking me to comment. I made the regular
00:09:00 12 no comment and left it at that. So within one hour,
00:09:02 13 fifteen minutes of leaving of the offices here, Chip
00:09:04 14 Jones was aware of what happened.
00:09:14 15 THE REPORTER: Your Honor, this is David
16 Campeau, the court reporter. I have had no contact
17 with anyone regarding this deposition.
00:09:16 18 VIDEO TECHNICIAN: Your Honor, this is
00:09:20 19 Kevin Olander, the videographer, and I have had no
00:09:22 20 contact with anyone regarding this matter.
00:09:22 21 MR. GORDON: Your Honor, this is Corey
00:09:26 22 Gordon again. If I may call the court's attention to
00:09:28 23 a couple specific paragraphs in the article that we
00:09:34 24 are concerned about as potentially shedding some
00:09:36 25 light on this issue, in the first paragraph, as Mr.

00:09:38 1 Webb read to you, it said, "The former director of

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00:09:42 2 Philip Morris USA's research center exercised his
00:09:46 3 right against self-incrimination yesterday during
00:09:48 4 pretrial questioning from lawyers from Minnesota and
00:09:52 5 Pennsylvania, according to informed sources." I
00:09:56 6 emphasize that "and Pennsylvania" because there was,
00:09:56 7 in fact, no questioning yesterday by lawyers from
00:09:58 8 Pennsylvania.
00:10:00 9 In particular, I want to call the court's
00:10:02 10 attention to the last three paragraphs of this
00:10:04 11 article: "Yesterday's hearing also included legal
00:10:06 12 counsel for a class-action lawsuit brought against
00:10:08 13 the tobacco industry in federal court in
00:10:10 14 Philadelphia.
00:10:12 15 "On June 4, U.S. District Judge Clarence
00:10:16 16 Newcomer denied class-action status in the
00:10:20 17 Pennsylvania suit, the second such ruling in recent
00:10:20 18 weeks.
00:10:22 19 "Despite the favorable ruling for the tobacco
00:10:26 20 industry, lawyers in the Pennsylvania suit continue
00:10:28 21 to prepare for trial this fall -- including
00:10:30 22 yesterday's attempt to question Osdene, sources
00:10:32 23 said."
00:10:34 24 And I call that to the court's attention because
00:10:36 25 of the detail it has about the Pennsylvania lawsuit

00:10:38 1 and the representations about the attempts of
00:10:42 2 Pennsylvania to question Dr. Osdene yesterday. And I
00:10:46 3 want to stress for the record the state of Minnesota
00:10:48 4 and Blue Cross and Blue Shield is deeply concerned

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00:10:52 5 about this, at least as concerned as, I think, Philip
00:10:56 6 Morris, and perhaps more concerned. There has been a
00:11:00 7 clear violation of Your Honor's seal order and it
00:11:02 8 didn't come from the state of Minnesota.
00:11:04 9 MR. WEBB: Your Honor, this is Dan Webb. A
00:11:08 10 follow-up to Mr. Gordon's comments. So that what
00:11:10 11 happened this morning doesn't become the end of the
00:11:12 12 matter, and I appreciate Your Honor taking the time
00:11:16 13 to make the inquiry, when Mr. Gordon -- when Mr.
00:11:18 14 Gordon was asked the question by Your Honor, he made
00:11:22 15 a very broad statement that nobody connected from the
00:11:24 16 state of Minnesota case has had any contact with the
00:11:26 17 press or provided any information. And that was a
00:11:28 18 very broad statement and one which shows he has
00:11:34 19 obviously done some due diligence. I'm not sure
00:11:36 20 counsel from Pennsylvania made that broad a statement
00:11:40 21 and I'm only going to ask that, because of the detail
00:11:44 22 in the article about Pennsylvania, counsel for
00:11:46 23 Pennsylvania can make the statement or be able to do
00:11:48 24 the inquiry so as an officer of the court you can
00:11:50 25 make the statement that would at least move our

00:11:52 1 inquiry forward.
00:11:56 2 MR. SHUB: I have not made that inquiry,
00:11:56 3 Your Honor, but I certainly will.
00:12:00 4 THE COURT: All right. I will expect a
00:12:02 5 response with regard to that, then, from
00:12:02 6 Pennsylvania.

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00:12:06 7 MR. SHUB: Yes, Your Honor.
00:12:12 8 THE COURT: Is there anyone that's present
00:12:16 9 in the room that is unaware of the court's order with
00:12:18 10 regard to this matter?
00:12:22 11 MR. GORDON: I don't believe so, Your
00:12:22 12 Honor.
00:12:28 13 THE COURT: I'll take that as a no. And I
00:12:32 14 will pursue the matter to the best of my ability.
00:12:38 15 Let's proceed, counsel.
00:12:46 16 MR. WEBB: May I just raise a preliminary
00:12:48 17 matter that Mr. Nunley has called to my attention?
00:12:50 18 Mr. Douglas is here today, I guess on behalf of the
00:12:52 19 state of Pennsylvania; is that correct?
00:12:54 20 MR. DOUGLAS: That's correct.
00:12:56 21 MR. WEBB: Are you a counsel of record in
00:12:58 22 Pennsylvania in the Arch case?
00:13:00 23 MR. DOUGLAS: I'm of counsel in the
00:13:00 24 Pennsylvania case.
00:13:04 25 MR. WEBB: I'm going to state on behalf of

00:13:06 1 Philip Morris, my understanding was that because this
00:13:08 2 is under seal, that there be nobody in this
00:13:10 3 deposition that was not counsel of record in the
00:13:14 4 precise cases that the deposition is going forward
00:13:16 5 under, and therefore I object to Mr. Douglas being
00:13:20 6 present because he is not counsel of record in the --
00:13:22 7 in the matter, is my understanding.
00:13:26 8 MR. SHUB: I will say Mr. Douglas has
00:13:28 9 signed the Arch confidentiality order and is

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00:13:34 10 therefore bound by the terms of that order, which
00:13:38 11 would then therefore make him bound by the provisions
00:13:42 12 and the judge's seal order here, so therefore we see
00:13:46 13 no harm in Mr. Douglas attending this deposition.
00:13:48 14 MR. WEBB: Your Honor, in light of what
00:13:50 15 happened last night and in light of the extraordinary
00:13:54 16 sensitivity of this deposition and Your Honor's seal
00:13:56 17 order, I think to error on the side of caution, I
00:13:58 18 suggest to the court that only counsel of record in
00:14:00 19 these two cases, the Arch case and the Minnesota
00:14:02 20 case, should be allowed to be present for this
00:14:06 21 deposition, and I respectfully ask that Mr. Douglas
00:14:08 22 be excused from this deposition.
00:14:12 23 MR. DOUGLAS: Well, Your Honor, this is
00:14:14 24 Cliff Douglas. I beg to differ with Mr. Webb's
00:14:20 25 characterization which implies that somehow I might

00:14:22 1 have had something to do with the issue that has been
00:14:26 2 raised in the last few minutes. I would point out I
00:14:28 3 was not present yesterday, in fact haven't even read
00:14:32 4 the article, although I've had the benefit of your
00:14:34 5 reciting quotations from it, and resent the
00:14:36 6 implication that there should be any connection made
00:14:40 7 between my presence here, my involvement in this
00:14:42 8 litigation, and the serious issue which you have
00:14:44 9 raised, Mr. Webb, this morning.
00:14:46 10 MR. WEBB: Mr. Douglas, I'm not making any
00:14:50 11 accusation against you. I heard your statement for

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00:14:52 the record and I accept that. But, because -- Your
00:14:52 Honor, because of the sensitivity of the deposition,
00:14:56 it seems to me the simple point is, only counsel of
00:14:58 record should be present, period, end of matter, and
00:15:00 I respectfully ask the court to excuse Mr. Douglas.
00:15:04 THE COURT: Mr. Douglas?
00:15:04 MR. DOUGLAS: Yes, sir.
00:15:10 THE COURT: Would you -- Are you in a
00:15:14 position to represent to the court as an officer of
00:15:16 the court that you would abide by the court's order
00:15:24 with regard to confidentiality in this deposition?
00:15:28 MR. DOUGLAS: Judge, I do so represent,
00:15:32 absolutely, and as Mr. Shub noted a few moments ago,
00:15:38 I have signed the confidentiality agreement as an

00:15:38 attorney.
00:15:40 MR. NUNLEY: Yours or the Minnesota?
00:15:42 THE COURT: I'll accept that and allow you
00:15:46 to remain present; however, I do expect a report back
00:15:50 with respect to this issue.
00:15:52 MR. DOUGLAS: Thank you, Your Honor.
00:15:56 MR. WEBB: Mr. Gordon, just as you proceed
00:15:56 -- let me -- I'm just going to make a general
00:15:58 objection on the record. Yesterday, because of the
00:16:02 unique nature of what happened on behalf of Philip
00:16:06 Morris, let me make a brief statement, Mr. Gordon,
00:16:08 which I think goes to the following.
00:16:10 Yesterday it became clear on this record at some
00:16:16 point in time during the questioning, it was clear

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00:16:18 15 that Mr. Osdene, Dr. Osdene, was going to invoke,
00:16:22 16 systematically invoke the fifth amendment essentially
00:16:26 17 to any and all questions regarding virtually any
00:16:28 18 subject matter connected with anything he did at
00:16:28 19 Philip Morris.
00:16:32 20 There is a body of case law, Your Honor, that
00:16:34 21 exists out there that says that once Mr. Gordon
00:16:38 22 learned that, that he was under a duty to ask
00:16:44 23 questions of the witness in such a way so that Mr.
00:16:46 24 Gordon himself did not become a testifying witness.
00:16:48 25 The courts recognize that when a witness is

00:16:52 1 taking the fifth amendment, if counsel asks leading,
00:16:56 2 fact-specific questions, where the witness is going
00:16:58 3 to take the fifth regardless of what's asked him,
00:17:06 4 there is a risk that the lawyer himself becomes the
00:17:06 5 testifying witness. That is an issue that is not
00:17:08 6 going to be able to be resolved today, and I'm not
00:17:12 7 suggesting the court resolve it. The reason I'm
00:17:14 8 raising it is to make it clear Philip Morris is not
00:17:16 9 waiving that issue.
00:17:18 10 Under Your Honor's Case Management Order,
00:17:22 11 objections that go to the admissibility of evidence
00:17:24 12 are reserved for trial. There is a significant issue
00:17:30 13 presented whether or not this examination should be
00:17:34 14 admissible against Philip Morris or any other tobacco
00:17:36 15 company in any trial that may take place in the
00:17:40 16 Minnesota case. Those issues are not to be addressed

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00:17:42 17 here and I don't suggest they will be, but I want to
00:17:46 18 make it clear on the record that that issue is
00:17:50 19 clearly present because of the nature of Mr. Gordon's
00:17:52 20 questions yesterday, and I wanted to make that
00:17:52 21 record. Thank you.
00:17:54 22 MR. GORDON: Your Honor, if I just may make
00:17:58 23 a response for the state of Minnesota to that, as a
00:18:02 24 general proposition, we are in agreement with Mr.
00:18:06 25 Webb's analysis of the case law and have also

00:18:08 1 reviewed the case law in preparation for this
00:18:12 2 deposition and concur that the case law is critical
00:18:18 3 of lawyers who ask questions essentially out of thin
00:18:22 4 air, knowing that the witness is going to plead the
00:18:26 5 fifth amendment, and for that reason we structured
00:18:28 6 our examination yesterday and anticipate structuring
00:18:32 7 our examination today with very fact-specific
00:18:34 8 questions drawn from documents as opposed to simply
00:18:38 9 setting up a series of do-you-still-beat-your-wife-
00:18:42 10 type questions that the witness is unable to respond
00:18:44 11 to other than by pleading the fifth.
00:18:48 12 We agree with Mr. -- essentially with Mr. Webb's
00:18:50 13 characterization of the case law. We believe our
00:18:54 14 examination has comported with the case law and we
00:18:58 15 would object to any examination of Dr. Osdene by
00:19:02 16 Philip Morris that is not similarly fact specific
00:19:06 17 based on reasonable inferences to be drawn from facts
00:19:14 18 that are in evidence and not simply a unilateral
00:19:16 19 fishing expedition to which this witness cannot

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00:19:16 20 respond.

00:19:20 21 And I -- and I point that out because of our

00:19:24 22 anticipation that there may be some effort by Philip

00:19:28 23 Morris to exceed the scope of permissible inquiry

00:19:32 24 under the case law. We do not believe the state of

00:19:34 25 Minnesota has done that nor do we believe the state

00:19:34 1 of Minnesota will do that today.

00:19:40 2 THE COURT: Anything else with respect to

00:19:44 3 that issue? Clearly -- The law is clear and the

00:19:48 4 issue will be addressed certainly before the

00:19:56 5 introduction of any testimony into court. I may

00:20:00 6 offhand recall a few questions regarding beating your

00:20:06 7 wife but we will rule on those at a later time.

00:20:06 8 MR. WEBB: Thank you, Your Honor.

00:20:08 9 MR. GORDON: Thank you.

00:20:10 10 THOMAS S. OSDENE

11 called as a witness, being first duly sworn,

12 was examined and testified as follows:

13 ADVERSE EXAMINATION

14 BY MR. GORDON:

00:20:10 15 Q. Dr. Osdene --

00:20:10 16 A. Sir.

00:20:12 17 Q. -- back to the deposition.

00:20:14 18 A. Right.

00:20:16 19 Q. You understand, sir, you are still under oath.

00:20:16 20 A. Yes, I do.

00:20:22 21 Q. Dr. Osdene, in response to a number of questions

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00:20:24 22 yesterday, you asserted your fifth amendment
00:20:28 23 privilege against self-incrimination. When you did
00:20:30 24 so, sir, were you asserting your fifth amendment
00:20:34 25 privilege because of a real concern that your answers

00:20:36 1 could be used against you in a criminal investigation
00:20:40 2 and not simply because you would prefer not to answer
00:20:40 3 the questions?
00:20:40 4 A. Yes.
00:20:42 5 Q. And you were doing so on advice of counsel; is
6 that correct?
00:20:42 7 A. Yes.
00:20:48 8 Q. What was the basis of your counsel's advice?
00:20:50 9 MR. NIELDS: I object, that's
00:20:52 10 attorney-client, and would direct him not to answer
00:20:54 11 on that ground.
00:20:58 12 MR. GORDON: And with the representation
00:21:02 13 from counsel that counsel is asserting privilege for
00:21:06 14 the basis of advice and any further questions would
00:21:08 15 draw an instruction not to answer, I will no longer
00:21:12 16 ask questions regarding the basis of counsel's
00:21:12 17 advice.
00:21:20 18 MR. GORDON: Could I have this marked,
00:21:20 19 please.
20 (Plaintiff's Deposition Exhibit 1519 was
21 marked for identification.)
00:21:46 22 BY MR. GORDON:
00:21:50 23 Q. Dr. Osdene, I'm showing you an exhibit marked
00:21:54 24 number 1519, a document produced by Philip Morris in

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00:22:00 25 discovery bearing Bates stamp number 1001609098, a

00:22:04 1 memorandum dated March 30, 1967. This is a

00:22:06 2 memorandum from H. Wakeham to Dr. T. S. Osdene and

00:22:10 3 Mr. R. D. Carpenter; is that correct, sir?

00:22:10 4 A. Yes.

00:22:12 5 MR. NIELDS: If you are asking him if the

00:22:14 6 document says that and if he sees it, he may answer

00:22:16 7 that, --

00:22:16 8 MR. GORDON: Yes.

00:22:18 9 MR. NIELDS: -- as yesterday.

00:22:18 10 A. Yes.

00:22:22 11 Q. And H. Wakeham would be Dr. Helmut Wakeham, the

00:22:24 12 vice president for research and development; is that

13 right?

00:22:28 14 A. On advice of counsel, I respectfully decline to

00:22:30 15 answer based on my fifth amendment privilege against

00:22:32 16 self-incrimination because there is an ongoing

00:22:34 17 parallel criminal investigation.

00:22:40 18 Q. I want to apologize to you. Upon reflection,

00:22:42 19 this date in 1967, I believe Dr. Wakeham may have

00:22:50 20 been at this point director of research. I don't

00:22:54 21 recall. Do you recall what Dr. Wakeham's position

00:22:54 22 was in 1967?

00:23:00 23 MR. NIELDS: Can he say "same response"?

00:23:04 24 Q. At this -- Okay. At this point, in anticipation

00:23:10 25 of you asserting the fifth amendment privilege to

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00:23:10 further questions, can we agree if you use the phrase
00:23:12 "same response" it will refer to the answer you just
00:23:14 gave asserting your fifth amendment privilege against
00:23:16 self-incrimination?
00:23:16 A. Yes, sir.
00:23:18 Q. Okay. And then the question again is, do you
00:23:22 recall in 1967 what Dr. Wakeham's actual title was?
00:23:24 A. Same response.
00:23:30 Q. Okay. R. D. Carpenter was Robert Carpenter; is
that correct?
00:23:32 A. Same response.
00:23:32 Q. Direct your attention to the second paragraph of
00:23:36 Exhibit 1519, which I will read: Quote,
00:23:40 "Bio-research is doing a chronic exposure test (now
00:23:44 with hamsters, they have decided) giving five sec. of
00:23:48 smoke 3 times a day. This sounds more and more like
00:23:52 what we are doing at IMBIFO. Bio-research program is
00:23:56 sponsored by CTR (U.S.A.)." First of all, do you see
00:23:56 that paragraph?
00:23:56 A. Yes.
00:24:00 Q. And IMBIFO refers to a biological research
00:24:04 institute in Cologne, Germany; correct?
00:24:04 A. Same response.
00:24:10 Q. In 1967, IMBIFO was a separate entity under
contract to Philip Morris to do inhalation work;

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correct?

00:24:14 A. Same response.

00:24:18 Q. And in 19 --

00:24:20 A. Excuse me.

00:24:22 Q. In 1967, you were one of senior Philip Morris

00:24:24 research and development people responsible for

00:24:28 coordination of the IMBIFO program; correct?

00:24:28 A. Same response.

00:24:32 MR. GORDON: Have that marked, please.

(Plaintiff's Deposition Exhibit 1520 was marked for identification.)

00:25:02 BY MR. GORDON:

00:25:08 Q. Dr. Osdene, I'm showing you what's been marked

00:25:10 as Exhibit 1520, a document produced by Philip Morris

00:25:18 bearing Bates stamp number 1000051014 through 1015.

00:25:24 It is an undated document entitled "IMBIFO Program."

00:25:26 First of all, do you recognize this document?

00:25:28 A. Same response.

00:25:30 Q. Do you have any idea what the date of this

00:25:30 particular document was?

00:25:32 A. Same response.

00:25:34 Q. I want to direct your attention to the second

00:25:38 paragraph of Exhibit 1520, wherein it states, quote,

00:25:42 Our present ideas concerning the IMBIFO work is that

00:25:44 it should be designed to determine the extent to

00:25:48 which bronchitis and emphysema --

00:25:48 MR. NIELDS: I'm sorry. I don't think

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00:25:52 3 either of us is with you. Can you tell us where you
00:25:52 4 are reading from?
00:25:54 5 MR. GORDON: Sure. Back up.
00:25:56 6 Q. I direct your attention to the second full
00:25:58 7 paragraph on the first page.
00:25:58 8 A. Oh, yes.
00:26:02 9 Q. And the line that states, "Our present ideas
00:26:04 10 concerning the IMBIFO work is that it should be
00:26:06 11 designed to determine the extent to which bronchitis
00:26:10 12 and emphysema can be caused in small animals in the
00:26:14 13 presence of cigarette smoke." Do you see that line?
00:26:14 14 A. Yes.
00:26:18 15 Q. Do you recall the period of time that IMBIFO was
00:26:20 16 doing work to determine the extent to which
00:26:22 17 bronchitis and emphysema could be caused in small
00:26:24 18 animals in the presence of cigarette smoke?
00:26:24 19 A. Same response.
00:26:28 20 Q. Do you recall whether IMBIFO in fact did make a
00:26:30 21 determination whether bronchitis and emphysema could
00:26:34 22 be caused in small animals in the presence of
00:26:36 23 cigarette smoke?
00:26:36 24 A. Same response.
00:26:38 25 Q. Was any work done by IMBIFO with respect to the

00:26:44 1 issue of bronchitis and emphysema made public?
00:26:44 2 A. Same response.
3 (Plaintiff's Deposition Exhibit 1521 was
4 marked for identification.)

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00:27:12 5 BY MR. GORDON:
00:27:14 6 Q. Dr. Wakeham [sic.], I'm showing you a document
00:27:20 7 marked Exhibit 1521, produced in discovery by Philip
00:27:24 8 Morris and bearing Bates stamp number 1001808371
00:27:30 9 through 374, a letter dated April 30, 1970, and this
00:27:36 10 is a letter from H. P. Staufer to Dr. Thomas S.
00:27:36 11 Osdene; correct.
00:27:38 12 MR. NIELDS: Again, when you ask it that
00:27:40 13 way, do you mean do you see those --
00:27:40 14 MR. GORDON: That's what it says on that.
00:27:42 15 MR. NIELDS: -- those names on the piece of
00:27:42 16 paper?
00:27:44 17 MR. GORDON: Right.
00:27:46 18 Q. That's what it says on the document; correct?
00:27:46 19 A. Yes.
00:27:50 20 Q. And the letter is from an entity called, and I
00:27:58 21 apologize for my poor French pronunciation, Fabriques
00:27:58 22 De Tabac Reunies SA; correct?
00:28:00 23 A. Same response.
00:28:04 24 Q. And that was also known as FTR; correct?
00:28:04 25 A. Same response.

00:28:12 1 Q. And FTR at the time of this letter was Philip
00:28:18 2 Morris' cigarette subsidiary -- subsidiary in
00:28:18 3 Switzerland; correct?
00:28:20 4 A. Same response.
00:28:26 5 Q. And this letter is from the -- well, it's in
00:28:28 6 French but it's from the research and development
00:28:30 7 department; correct?

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00:28:30 8 A. Same response.

00:28:34 9 Q. And H. P. Staufer was a scientist in the FTR

00:28:40 10 research and development in 1970; correct?

00:28:42 11 A. Same response.

00:28:44 12 Q. At the time this letter was written to Thomas S.

00:28:48 13 Osdene at Philip Morris Incorporated in Richmond, you

00:28:50 14 were Philip Morris's director of research and

00:28:52 15 development, were you not, sir?

00:28:52 16 A. Same response.

00:28:54 17 Q. First paragraph of 1521 states, "Dear Tom,

00:28:58 18 Enclosed with this letter you will find the latest

00:29:02 19 reports submitted by Dr. Hackenberg from Cologne. I

00:29:04 20 think with this we could bring to a good end the

00:29:08 21 toxicological comparison of two cigarettes. This is

00:29:10 22 certainly true as far as the methodology is

00:29:12 23 concerned." Do you see that paragraph?

00:29:12 24 A. Yes.

00:29:16 25 Q. "Dr. Hackenberg" refers to Dr. Ulrich

00:29:18 1 Hackenberg, the director of IMBIFO; correct?

00:29:18 2 A. Same response.

00:29:22 3 Q. And it was the policy within Philip Morris for

00:29:30 4 reports from IMBIFO to be forwarded by FTR to you;

5 correct?

00:29:32 6 MR. WEBB: Objection.

00:29:34 7 A. Same response.

00:29:36 8 MR. GORDON: Whose objection was that?

00:29:38 9 MR. WEBB: Philip Morris.

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00:29:38 10 MR. GORDON: What was the basis of that?
00:29:40 11 MR. WEBB: Form of the question. I believe
00:29:44 12 that -- I believe the facts are -- I believe that's
00:29:46 13 an inaccurate statement of the facts and I'm
00:29:48 14 occasionally going to make that objection to make
00:29:48 15 sure the record is clear.
00:29:52 16 Under the Case Management Order, I'm supposed to
00:29:54 17 object to the form of the question, not anything of
00:29:58 18 substance, which I intend to do, and I don't want to
00:30:00 19 waive any objection I have to the fact that your
00:30:02 20 questions, when they go beyond the face of the
00:30:04 21 documents and ask factual statements, you are in
00:30:06 22 effect becoming a testifying witness for this
00:30:08 23 witness, and because of his invocation of the fifth
00:30:10 24 amendment, just so the record is clear, I'm going to
00:30:12 25 occasionally make that objection.

00:30:14 1 Frequently I don't necessarily know whether you
00:30:16 2 have a good-faith basis for your question. I'm not
00:30:20 3 implying bad faith on your part but I'm trying to
00:30:22 4 make sure I maintain my record. As I understand the
00:30:24 5 Case Management Order, I'm supposed to use the word
00:30:26 6 "objection," not supposed to say anything else, and
00:30:30 7 that preserves the objection, and I'm going to follow
00:30:30 8 that proceed.
00:30:32 9 MR. GORDON: I think that's an accurate
00:30:34 10 statement of the Case Management Order and I did
00:30:38 11 invite you to explain the basis of that form
00:30:40 12 objection. Thank you for doing so.

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00:30:42 13 MR. GORDON: Could we have Exhibit 145,
00:30:42 14 please.
00:30:56 15 BY MR. GORDON:
00:30:56 16 Q. Dr. Osdene, I'm showing you what's been
00:31:00 17 previously marked as Exhibit 145, a document produced
00:31:04 18 by Philip Morris in discovery bearing Bates stamp
00:31:12 19 number 2022244451 through 4453, a memorandum dated
00:31:16 20 April 7, 1970 from H. Wakeham to Mr. C. H.
00:31:24 21 Goldsmith. Do you have Exhibit 145 in front of you?
00:31:26 22 MR. NIELDS: Yes. Sorry. It has two
00:31:28 23 different Bates numbers on it and I was looking at
00:31:30 24 the wrong one.
00:31:32 25 MR. GORDON: For clarification, counsel, I

00:31:34 1 believe the large one at the top is an internal
00:31:34 2 Philip Morris --
00:31:36 3 MR. NIELDS: All right.
00:31:38 4 MR. GORDON: -- microfiche tracking
00:31:40 5 number. The Bates number appears at the bottom.
00:31:42 6 MR. NIELDS: Sorry for interruption. I see
00:31:44 7 the Bates number now.
00:31:44 8 BY MR. GORDON:
00:31:46 9 Q. Dr. Osdene, directing your attention to the
00:31:50 10 third paragraph of Exhibit 145, where in the first
00:31:52 11 sentence it states, quote, "Since we have a major
00:31:56 12 program at IMBIFO and since this is a locale where we
00:31:58 13 might do some of the things which we are reluctant to
00:32:02 14 do in this country, I recommend that we acquire

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00:32:06 15 IMBIFO either in toto or to the extent of controlling
00:32:08 16 interest." Do you see that sentence, sir?
00:32:10 17 A. Yes.
00:32:12 18 Q. In fact, subsequent to this Philip Morris did
00:32:16 19 purchase IMBIFO through FTR; correct?
00:32:18 20 A. Same response. Excuse me.
00:32:20 21 Q. Indeed in 1970, Philip Morris did have a major
00:32:22 22 program at IMBIFO; correct?
00:32:22 23 A. Same response.
00:32:26 24 Q. What were some of the things that Philip Morris
00:32:30 25 was reluctant to do in the United States that Philip

00:32:32 1 Morris was doing in IMBIFO?
00:32:32 2 A. Same response.
00:32:36 3 MR. GORDON: Could we have Exhibit 279,
00:32:36 4 please.
00:32:50 5 BY MR. GORDON:
00:33:04 6 Q. Dr. Osdene, showing you what's been marked as
00:33:08 7 Exhibit 279, a document previously marked in
00:33:12 8 discovery and a document which was produced by Philip
00:33:18 9 Morris and bearing Bates stamp number 2000512794
00:33:24 10 through 12795, this is a letter dated March 31st,
00:33:28 11 1977 from Robert B. Seligman to Dr. Max Hausermann at
00:33:34 12 Philip Morris Europe S.A. in Neuchatel, Switzerland.
00:33:44 13 And in 1977, Philip Morris had a -- had an office in
00:33:48 14 Neuchatel, Switzerland known as Philip Morris Europe
00:33:50 15 S.A.; is that correct?
00:33:50 16 A. Same response.

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00:33:54 17 Q. Philip Morris Europe S.A. had a research and
00:33:56 18 development department; correct?
00:33:56 19 A. Same response.
00:34:00 20 Q. And in 1977, Dr. Max Hausermann was in charge of
00:34:00 21 that research and development department in
00:34:02 22 Switzerland, correct?
00:34:02 23 A. Same response.
00:34:06 24 Q. Subsequently Dr. Hausermann became Philip Morris
00:34:08 25 vice president for research and development and your

00:34:10 1 superior; correct?
00:34:10 2 A. Same response.
00:34:20 3 Q. I direct your attention to Exhibit 279 and this
00:34:24 4 letter, and I will read the first full paragraph into
00:34:28 5 the record. Quote, "I received a copy of Helmut
00:34:32 6 Gaisch's March 24, 1977 letter to Jerry Osmalov
00:34:36 7 concerning pesticide residue analyses. As you were
00:34:40 8 copied, you know that Helmut was requesting that we
00:34:42 9 send copies directly to IMBIFO. This suggested
00:34:46 10 procedure is in direct conflict with our
00:34:48 11 communications with the New York office. We have
00:34:52 12 gone to great pains to eliminate any contact with
00:34:56 13 IMBIFO and I would like to maintain this structure."
00:34:58 14 Do you see that paragraph, sir?
00:34:58 15 A. Yes.
00:35:00 16 Q. Why did Philip Morris go to great pains to
00:35:06 17 eliminate any contact with IMBIFO?
00:35:06 18 A. Same response.
00:35:08 19 Q. Now, the next paragraph of Exhibit 279 states,

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00:35:12 20 quote, "Therefore, I am advising Jerry Osmalov to
00:35:16 21 continue sending copies to Neuchatel for
00:35:18 22 transshipment to IMBIFO. If this procedure is
00:35:22 23 unacceptable to you, perhaps we should consider a
00:35:26 24 'dummy' mailing address in Koln for the receipt of
00:35:32 25 samples. The written analytical date will still have

00:35:34 1 to be routed through FTR if we are to avoid direct
00:35:38 2 contact with IMBIFO and Philip Morris U.S.A. I'll
00:35:40 3 leave it to you to decide what route you will
00:35:40 4 follow." Do you see that, sir?
00:35:42 5 A. Yes.
00:35:44 6 Q. Why did Philip Morris want to avoid direct
00:35:48 7 contact with IMBIFO and Philip Morris U.S.A.?
00:35:50 8 A. Same response.
00:35:58 9 Q. And the final paragraph, final full paragraph on
00:36:00 10 the second page, "In any event, I would suggest you
00:36:04 11 retrieve the March 24 letter Helmut Gaisch sent to
00:36:06 12 Jerry, including all copies. My copy is returned
00:36:08 13 herewith." Do you see that line?
00:36:08 14 A. Yes.
00:36:12 15 Q. And was that a practice in Philip Morris when a
00:36:14 16 letter that Philip Morris didn't want to have
00:36:20 17 available in it's own files was sent, that the
00:36:24 18 letters would be returned or retrieved by others to
00:36:26 19 ensure that Philip Morris did not have the copy in
00:36:26 20 its files?
00:36:28 21 A. Same response.

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00:36:30 22 MR. GORDON: Could we have Exhibit 91,

00:36:32 23 please.

00:36:38 24 BY MR. GORDON:

00:36:42 25 Q. Dr. Osdene, I'm showing you what's been

00:36:44 1 previously marked as Exhibit 91, a document produced

00:36:48 2 to Philip Morris and bearing Bates stamp number

00:36:54 3 1000130803. This is a document that Philip Morris

00:36:56 4 has represented to you -- to us it came from the

00:36:58 5 files of Dr. Thomas Osdene.

00:37:04 6 This is a document in your handwriting, is it

00:37:04 7 not, sir?

00:37:06 8 A. Same response.

00:37:08 9 Q. And the first line on this document states,

00:37:14 10 quote, "ship all documents to Cologne by," and it

00:37:18 11 appears to be T-o-m. Do you see that?

00:37:18 12 A. Right.

00:37:20 13 Q. Do you see the line?

00:37:20 14 A. I see the line.

00:37:24 15 Q. Does T-o-m refer to an individual by the name of

00:37:28 16 Tom or is it an abbreviation for "tomorrow"?

00:37:30 17 A. Same response.

00:37:32 18 Q. What were the documents that you were directing

00:37:36 19 be shipped to Cologne?

00:37:36 20 A. Same response.

00:37:42 21 Q. The second line on Exhibit 91 states "keep in

00:37:44 22 Cologne." Do you see that?

00:37:44 23 A. Yes.

00:37:46 24 Q. Why were the documents to be kept in Cologne?

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00:37:48 A. Same response.

00:37:54 Q. I direct your attention to the third line:
00:37:58 "Okay to phone and telex. These will be
00:38:00 destroyed." Do you see that?
00:38:00 A. Yes.
00:38:04 Q. Did you destroy any phone messages or telexes?
00:38:04 A. Same response.
00:38:08 Q. And the fourth line says, "Please make available
00:38:12 file cabinet. Jim will put into shape end of August
00:38:14 or beginning of September." Do you see that line?
00:38:14 A. Yes.
00:38:18 Q. I will represent to you that Dr. James Charles
00:38:22 has testified that he is the Jim referred to. Is
00:38:24 that consistent with your understanding?
00:38:24 A. Same response.
00:38:26 Q. And I will further represent to you that Dr.
00:38:28 Charles testified that there were -- there was a
00:38:32 large filing cabinet in a conference room at the
00:38:38 IMBIFO headquarters in Cologne which is the file
00:38:40 cabinet referred to in Exhibit 4. Is that consistent
00:38:42 with your recollection, sir?
00:38:42 A. Same response.
00:38:46 Q. And I direct your attention to number 5, quote,
00:38:50 "We will monitor in person every two to three
00:38:52 months." Do you see that line, sir?
00:38:52 MR. NIELDS: You are asking again whether

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00:38:54 he sees the line.

00:38:56 MR. GORDON: Whether he sees the line.

00:38:56 A. Yes.

00:38:58 Q. What was it you were monitoring in person every

00:38:58 two to three months?

00:39:00 A. Same response.

00:39:04 Q. Number 6, "If important," and "important" is

00:39:08 underlined, "letters or documents have to be sent,

00:39:12 please send to home. I will act on them and

00:39:12 destroy." Do you see that?

00:39:14 A. Yes.

00:39:14 MR. NIELDS: Whether he sees that line.

00:39:16 MR. GORDON: Whether you see the line.

00:39:18 MR. NIELDS: Because the writing is not

00:39:20 absolutely clear.

00:39:20 A. I see the line.

00:39:22 Q. Is there -- Do you have a different reading of

00:39:26 any of the words in there in light of your counsel's

00:39:26 comments?

00:39:28 A. Same response.

00:39:32 Q. Did you have a fax machine at your home at any

00:39:32 time, sir?

00:39:36 A. Same response.

00:39:42 Q. Did you have a fax machine provided by and paid

00:39:42 for by Philip Morris, sir?

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00:39:44 1 A. Same response.
00:39:46 2 Q. Did you ever receive letters or documents
00:39:50 3 concerning research conducted on behalf of Philip
00:39:54 4 Morris by IMBIFO at your home.
00:39:54 5 A. Same response.
00:39:56 6 Q. Did you ever destroy any such documents, sir?
00:39:58 7 A. Same response.
00:40:10 8 Q. Number 7 says, "Advise Rylander when writing re
00:40:12 9 IMBIFO." Do you see that?
00:40:14 10 MR. NIELDS: Do you see the line?
00:40:14 11 A. I see the line.
00:40:20 12 Q. Rylander refers to Dr. Ragnar Rylander; correct?
00:40:20 13 A. Same response.
00:40:24 14 Q. Dr. Rylander was a scientist at the University
00:40:28 15 of Gothenburg under contract with Philip Morris;
00:40:30 16 correct?
00:40:30 17 A. Same response.
00:40:34 18 Q. Dr. Rylander was one of the people in Europe
00:40:36 19 Philip Morris relied on to coordinate scientific
00:40:40 20 studies at IMBIFO; correct?
00:40:40 21 A. Same response.
00:40:42 22 Q. Direct your attention to the eighth line on
00:40:50 23 Exhibit 91: "Can UH, RR and TSO meet in July in
00:40:56 24 Cologne to discuss first and 2nd July." Do you see
00:40:56 25 that line?

00:40:58 1 A. I see the line.
00:41:02 2 Q. UH refers to Ulrich Hockenburg; correct?

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00:41:02 3 A. Same response.
00:41:04 4 Q. And Ulrich Hockenburg was the director of
00:41:06 5 IMBIFO; correct?
00:41:08 6 A. Same response.
00:41:12 7 Q. RR refers to Ragnar Rylander; correct, sir?
00:41:12 8 A. Same response.
00:41:16 9 Q. And TSO refers to Thomas S. Osdene; correct,
10 sir?
00:41:18 11 A. Same response.
00:41:22 12 Q. Did you and Dr. Rylander and Dr. Hackenberg meet
00:41:24 13 in July in Cologne to discuss whatever it was that
00:41:26 14 was being referred to in Exhibit 91?
00:41:28 15 A. Same response.
00:41:30 16 Q. Do you know what year this document refers to?
00:41:32 17 A. Same response.
00:41:36 18 Q. What was the project that IMBIFO was conducting
00:41:38 19 where all the documents were to be shipped to
00:41:42 20 Cologne, kept in a file cabinet and any
00:41:44 21 communications with you were to be destroyed?
00:41:46 22 A. Same response.
00:41:48 23 Q. Did that involve inhalation tests, sir?
00:41:50 24 A. Same response.
00:42:02 25 Q. Did any of those documents reflect scientific

00:42:06 1 studies that concluded on behalf of IMBIFO that
00:42:10 2 cigarette smoking caused any diseases?
00:42:12 3 A. Same response.
00:42:16 4 Q. I'd like to show you what has previously been
00:42:20 5 marked as Defendants' Exhibit 2, a document entitled

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00:42:30 6 "A Frank Statement to Cigarette Smokers," a copy of
00:42:32 7 an advertisement that appeared in publications
00:42:34 8 throughout the United States in 1954.
00:42:38 9 Did you ever see this document before today,
00:42:38 10 sir?
00:42:38 11 A. Same response.
00:42:40 12 Q. This document informs the public that the
00:42:42 13 tobacco industry was creating a group to be known as
00:42:46 14 the Tobacco Industry Research Committee; isn't that
15 correct, sir?
00:42:46 16 A. Same response.
00:42:54 17 Q. And in this public document, the tobacco
00:42:58 18 industry advised the public the tobacco industry was,
00:43:00 19 quote, "...pledging aid and assistance into the
00:43:06 20 research effort into all phases of tobacco use and
00:43:08 21 health. This joint financial aid will of course be
00:43:10 22 in addition to what is already being contributed by
00:43:12 23 individual companies." Do you see that line, sir?
00:43:14 24 MR. NIELDS: You are asking if he sees
00:43:14 25 those words on the page?

00:43:16 1 MR. GORDON: Right, under number 1.
00:43:16 2 A. Yes.
00:43:22 3 MR. GORDON: If I could have Exhibit 263,
00:43:24 4 please.
00:43:30 5 MR. NIELDS: Should we keep this one?
00:43:36 6 BY MR. GORDON:
00:43:42 7 Q. I'm showing you what's been marked as Exhibit --

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00:43:46 8 previously marked as Exhibit 263, a document produced
00:43:50 9 in discovery by Defendant American Tobacco, bearing
00:44:00 10 Bates stamp number MNAT00609873 through 881, a
00:44:02 11 document titled, quote, "STATEMENT CONCERNING THE
00:44:06 12 ORIGIN AND PURPOSE OF TOBACCO INDUSTRY RESEARCH
00:44:10 13 COMMITTEE AND ITS PROPOSED FUNCTIONS." And I want to
00:44:14 14 direct your attention to the eighth page of this
00:44:20 15 document, under paragraph Roman numeral IV, "Limit of
00:44:26 16 Powers." And I want to read this paragraph for the
00:44:30 17 record: Quote, "The purposes and objectives of the
00:44:34 18 Committee are to aid and assist research into tobacco
00:44:36 19 use and health, and particularly into the alleged
00:44:40 20 relationship between the use of tobacco and lung
00:44:42 21 cancer, and to make available to the public factual
00:44:44 22 information on this subject. It is the considered
00:44:48 23 judgment of the Committee that its activities shall
00:44:50 24 be confined to the purposes set forth above, and that
00:44:54 25 it is in nowise to be considered or operate as a

00:44:58 1 trade association or to participate in any activity,
00:45:02 2 or give consideration to any matters, affecting the
00:45:06 3 business conduct or activities of its members, and
00:45:10 4 that its activities in every respect shall conform to
00:45:14 5 law and all decrees or judgments of courts affecting
00:45:16 6 or relating to the tobacco industry."
00:45:18 7 Do you see that line that -- those lines that
00:45:18 8 I've read?
00:45:18 9 A. Yes.

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00:45:20 10 Q. And was it your understanding, sir, that
00:45:28 11 throughout the years in which the tobacco industry
00:45:32 12 research committee later named The Council for
00:45:36 13 Tobacco Research U.S.A. operated that it was
00:45:40 14 operating subject to this limit of powers I just
00:45:40 15 read?
00:45:42 16 A. Same response.
00:45:44 17 Q. And was it your understanding that the tobacco
00:45:48 18 industry had represented to the public that TIRC and
00:45:52 19 CTR was operating with this limit of powers that I've
00:45:54 20 just read?
00:45:54 21 A. Same response.
00:46:00 22 MR. GORDON: If I may have this exhibit
00:46:02 23 marked, please.
24 (Plaintiff's Deposition Exhibit 1522 was
25 marked for identification.)

00:46:30 1 BY MR. GORDON:
00:46:34 2 Q. Dr. Osdene, I'm showing you what's been marked
00:46:38 3 as Exhibit 1522, a document produced in discovery by
00:46:42 4 Defendant Brown & Williamson Tobacco Company bearing
00:46:48 5 Bates stamp number 682011463 through 467, a
00:46:52 6 memorandum dated October 12, 1967. This is a memo on
00:46:56 7 the letterhead of Philip Morris, Incorporated, from
00:47:00 8 T. S. Osdene to Dr. H. Wakeham; is that correct?
00:47:02 9 MR. NIELDS: Do you mean does he see these
00:47:04 10 words the page?
00:47:04 11 MR. GORDON: Yes.

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00:47:04 12 A. Yes.

00:47:08 13 Q. In fact, this is a memo from you to Dr. Osdene;

14 correct?

00:47:08 15 A. Same response.

00:47:14 16 Q. And this memo summarizes a meeting held in New

00:47:16 17 York City on September 25th, 1967 at the Council for

00:47:18 18 Tobacco Research; correct?

00:47:18 19 A. Same response.

00:47:22 20 Q. And the representatives listed as being at that

00:47:26 21 meeting in addition to individuals associated with

00:47:28 22 CTR included individuals from Liggett and Meyers,

00:47:32 23 American Tobacco Company, Brown & Williamson,

00:47:36 24 Reynolds Tobacco Company, P. Lorillard Company, Larus

00:47:38 25 & Brother Company and Philip Morris Inc.; correct?

00:47:40 1 A. Same response.

00:47:44 2 Q. And those included the senior -- Strike that.

00:47:48 3 The individuals representing the various tobacco

00:47:52 4 companies included senior research and development

00:47:56 5 scientists; correct?

00:47:56 6 A. Same response.

00:48:00 7 Q. That would include Murray Senkus for Reynolds

00:48:06 8 Tobacco Company, A. W. Spears for Lorillard, R. B.

00:48:08 9 Griffith for Brown & Williamson, E. S. Harlow for

00:48:12 10 American and W. W. Bates for Liggett and Meyers;

11 correct?

00:48:12 12 A. Same response.

00:48:14 13 Q. And you were attending on behalf of Philip

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00:48:14 14 Morris; correct?
00:48:16 15 A. Same response.
00:48:22 16 Q. It also references an R. C. Hockett attending on
00:48:24 17 behalf of CTR. Do you see that?
00:48:26 18 MR. NIELDS: You mean does he see the word
00:48:26 19 on the page?
00:48:28 20 MR. GORDON: Right.
00:48:28 21 A. I see the name.
00:48:32 22 Q. And Dr. Hockett was the associate scientific
00:48:34 23 director of CTR; correct?
00:48:36 24 A. Same response.
00:48:38 25 Q. And the first line on your memo to Dr. Wakeham

00:48:42 1 says, quote, "Dr. Hockett stated that CTR is moving
00:48:46 2 into an era of active collaboration with the industry
00:48:50 3 and they wish to make the technical committee more
00:48:54 4 effective by including biologists." Do you see that?
00:48:54 5 A. I see it.
00:49:00 6 Q. And in fact in 1967 CTR did move into an era of
00:49:02 7 active collaboration with the industry; correct?
00:49:04 8 MR. WEBB: Objection.
00:49:06 9 A. Same response.
00:49:10 10 Q. And CTR's moving into an era of active
00:49:14 11 collaboration with the industry was not publicly
00:49:16 12 disclosed; correct?
00:49:16 13 A. Same response.
00:49:20 14 Q. And CTR's moving into an era of active
00:49:24 15 collaboration with the industry was inconsistent with
00:49:28 16 it's limits of powers including the provision that it

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00:49:32 17 is in nowise to be considered or operate as a trade
00:49:34 18 association or to participate in any activity or give
00:49:38 19 consideration to any matters affecting the business
00:49:40 20 conduct or activities of its members?
00:49:42 21 MS. De KOCK: Objection.
00:49:42 22 MR. WEBB: Objection.
00:49:48 23 A. Same response.
00:49:50 24 MR. GORDON: Could we have Exhibit 266,
00:49:50 25 please.

00:50:06 1 BY MR. GORDON:
00:50:08 2 Q. Dr. Osdene, I'm showing you what's been
00:50:12 3 previously marked as Exhibit 266, a document produced
00:50:14 4 in discovery by Philip Morris bearing Bates stamp
00:50:20 5 number 1005049661 through 9462, a letter dated
00:50:24 6 September 12, 1968 from Alexander Holtzman, assistant
00:50:26 7 general counsel of Philip Morris, Incorporated, to
00:50:30 8 Dr. Charles P. Larson of Tacoma General Hospital. Do
00:50:32 9 you see that, sir?
00:50:32 10 A. Yes.
00:50:34 11 Q. And I direct your attention to the third
00:50:40 12 paragraph of this letter to Dr. Larson saying, quote,
00:50:42 13 "The project will be funded by the CTR as a, quote,
00:50:46 14 special project, close quote, which is to say that
00:50:48 15 the project is approved by the CTR staff rather than
00:50:52 16 by its Scientific Advisory Board." Do you see that,
00:50:52 17 sir?
00:50:52 18 A. I see that.

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00:50:56 19 Q. And it was in fact the practice, at least as
00:51:00 20 early as 1968, for certain research projects to be
00:51:06 21 funded by CTR as, quote, special projects, close
00:51:08 22 quote; correct, sir?
00:51:08 23 A. Same response.
00:51:12 24 Q. And the fact that CTR was funding the so-called,
00:51:14 25 quote, special projects, close quote, was never

00:51:16 1 disclosed to the general public, was it?
00:51:16 2 MR. WEBB: Objection.
00:51:18 3 MS. De KOCK: Objection.
00:51:18 4 A. Same response.
00:51:22 5 Q. And the fact that Alexander Holtzman, an
00:51:24 6 attorney with Philip Morris, was informing this
00:51:32 7 scientist of the decision to fund his project as a
00:51:34 8 CTR special project was consistent with the policy of
00:51:38 9 lawyer involvement in determining which special
00:51:42 10 projects would be funded by CTR; correct?
00:51:44 11 MR. WEBB: Objection.
00:51:46 12 MS. De KOCK: Objection.
00:51:46 13 A. Same response.
00:51:48 14 Q. And in fact throughout your tenure at Philip
00:51:54 15 Morris, one of your oft expressed concerns was the
00:51:58 16 degree to which lawyers were controlling research;
17 correct?
00:51:58 18 MR. WEBB: Objection.
00:52:00 19 MS. De KOCK: Objection.
00:52:10 20 A. Same response.
00:52:10 21 MR. GORDON: Can we have this marked,

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00:52:12 22 please?

23 (Plaintiff's Deposition Exhibit 1523 was

24 marked for identification.)

00:52:32 25 BY MR. GORDON:

00:52:42 1 Q. Dr. Osdene, I'm showing you what's been marked

00:52:44 2 as Exhibit 1523, a document previously produced in

00:52:46 3 discovery by Philip Morris bearing Bates stamp number

00:52:54 4 2022246951 through 6952. The first page of this

00:53:00 5 document is a memorandum from R. B. Seligman to C. H.

00:53:02 6 Goldsmith dated November 30, 1977, and the subject is

00:53:06 7 Council for Tobacco Research program. Do you see

00:53:06 8 that?

00:53:10 9 MR. NIELDS: Does he see the "to," "from"

00:53:12 10 and "subject" words on the document?

00:53:12 11 MR. GORDON: Exactly.

00:53:14 12 A. Yes.

00:53:20 13 Q. And the first page references that Tom Osdene

00:53:24 14 represented Philip Morris at a CTR program review

00:53:26 15 session on November 22nd, 1977; is that correct? Is

00:53:28 16 that what the document says?

00:53:32 17 MR. NIELDS: Now --

00:53:34 18 A. Same response.

00:53:38 19 Q. Well let me read the exact language. "On

00:53:40 20 November 22nd, 1977, Tom Osdene represented Philip

00:53:44 21 Morris at a CTR program review session." Do you see

00:53:44 22 that line?

00:53:46 23 A. Yes.

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00:53:48 24 Q. And that was a correct statement of what

00:53:50 25 occurred on November 22nd, 1977; correct?

00:53:52 1 A. Same response.

00:53:56 2 Q. And Dr. Seligman goes on to say that Tom wrote a

00:54:00 3 memo to Seligman concerning what he heard at this

00:54:04 4 review session and it is that memo which is attached

00:54:08 5 as the second page of Exhibit 1523; correct?

00:54:08 6 A. Same response.

00:54:14 7 Q. And if you turn to the second page of 1523, it

00:54:18 8 is a memorandum dated November 29, 1977 from T. S.

00:54:22 9 Osdene to Dr. R. B. Seligman; correct?

00:54:24 10 A. Same response.

00:54:26 11 Q. And it states -- And the subject is, quote,

00:54:28 12 "Some Comments About the CTR Program." Do you see

00:54:28 13 that?

00:54:30 14 A. Same response.

00:54:32 15 MR. NIELDS: Does he see those words on the

00:54:32 16 page?

00:54:32 17 MR. GORDON: Yes.

00:54:34 18 A. I see the words.

00:54:36 19 Q. And this in fact was a summary of your

00:54:40 20 observations concerning The Council for Tobacco

00:54:42 21 Research following your attendance at a program

00:54:44 22 review session in November of 1977; correct?

00:54:46 23 A. Same response.

00:54:48 24 Q. And the first paragraph of your memo states,

00:54:54 25 quote, I was amazed that -- at the trend that the CTR

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00:54:58 work is taking. For openers Dr. Donald H. Ford, a
00:55:00 new staff member, makes the following quotes.
00:55:02 Quote, Opiates and nicotine may be similar in
00:55:04 action, close quote.
00:55:06 Quote, We accept the fact that nicotine is
00:55:08 habituating, close quote.
00:55:12 Quote, There is a relationship between nicotine
00:55:16 and the opiates, close quote. Do you see that?
00:55:18 MR. NIELDS: You are drawing his attention
00:55:18 to that portion of the document?
00:55:20 MR. GORDON: Those words?
00:55:22 A. I read those words.
00:55:24 Q. Why did that amaze you, sir?
00:55:26 A. Same response.
00:55:30 Q. Is it a fact, sir, somebody associated with CTR
00:55:32 would be holding those views concerning the
00:55:36 relationship between nicotine and opiates and the
00:55:38 fact that nicotine is habituating?
00:55:40 MR. WEBB: Objection.
00:55:40 A. Same response.
00:55:44 Q. The next paragraph on your memo states, quote,
00:55:46 "Dr. Leo Abood, whose presentation showed a high
00:55:50 degree of competence, has one of his aims specific
00:55:52 antagonist to nicotine. This is done by various
00:55:56 chemical manipulations of nicotine and could well

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00:56:00 lead to a clinically acceptable antagonist." Do you
00:56:00 see that?
00:56:02 A. Same response.
00:56:06 Q. And when you use the phrase "clinically
00:56:10 acceptable antagonist," that would mean a chemical
00:56:12 that when ingested by a human being would prevent
00:56:16 nicotine from having its effects on the central
00:56:18 nervous system; correct?
00:56:18 A. Same response.
00:56:24 Q. And a clinical antagonist to nicotine would be
00:56:30 something that could be -- that would prevent someone
00:56:34 who was addicted to nicotine from receiving the
00:56:38 central nervous system effects that perpetuate
00:56:40 nicotine addiction; correct?
00:56:42 MR. WEBB: Objection.
00:56:44 A. Same response.
00:56:46 Q. You next -- In the next paragraph you have
00:56:50 stated, quote, "Dr. Kreisher's work in the area of
00:56:54 AAH from my point of view, starts out with the
00:56:56 proposition that smoking causes lung cancer. The
00:57:00 rest of work seems to justify this approach. I am
00:57:04 very surprised about the extensive human clinical
00:57:06 data which is now being sought and feel after four
00:57:08 years of this project nobody has the slightest idea
00:57:12 where it is going, where it is or what it is trying

00:57:12 to prove." Do you see that line?
00:57:14 A. Same response.

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00:57:16 3 Q. And the fourth and final paragraph of this memo
00:57:20 4 from you to Dr. Seligman states, quote, "It is my
00:57:22 5 strong feeling that with the progress that has been
00:57:26 6 claimed, we are in the process of digging our own
00:57:30 7 grave. I believe that the program as set up has the
00:57:32 8 potential of great damage to the industry and I
00:57:36 9 strongly urge the whole relationship of our company
00:57:40 10 to CTR be carefully reviewed. I am very much afraid
00:57:42 11 the direction of the work being taken by CTR is
00:57:46 12 totally detrimental to our position and undermines
00:57:52 13 the public posture we have taken to outsiders." Do
00:57:52 14 you see that, sir?
00:57:52 15 A. Same response.
00:57:54 16 Q. And in fact the direction of CTR changed
00:57:58 17 significantly in response to your concerns; correct?
00:58:00 18 MR. WEBB: Objection.
00:58:02 19 MS. De KOCK: Objection.
00:58:02 20 A. Same response.
00:58:08 21 MR. GORDON: Can we have this marked,
00:58:10 22 please.
23 (Plaintiff's Deposition Exhibit 1524 was
00:58:30 24 marked for identification.)
00:58:38 25 MR. NIELDS: Which document? You handed me

00:58:40 1 one document and then handed the witness a different
00:58:48 2 one. Which would you like us to look at, use?
00:59:00 3 MR. GORDON: Oh. This is a mistake. Could
00:59:04 4 I have the court reporter cross off, strike that as

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00:59:04 an exhibit. It's this one that should have been

00:59:10 marked, and I think I gave one of my two copies --

00:59:12 did I give you two copies?

00:59:12 (Discussion off the stenographic record.)

00:59:40 BY MR. GORDON:

00:59:46 Q. With that correction now, sir, I'm showing you

00:59:48 what has been marked as Exhibit 1524, a document

00:59:50 produced in discovery by Philip Morris bearing Bates

00:59:58 stamp number 1000041904 through 1905, a memorandum

01:00:04 dated January 10, 1978 from T. S. Osdene to file. Do

01:00:04 you see that, sir?

01:00:06 MR. NIELDS: You are asking just if he sees

01:00:06 those words on the page.

01:00:08 MR. GORDON: Right.

01:00:08 A. Yes.

01:00:12 Q. And the subject of Exhibit 1524 is: "CTR

01:00:14 Meeting, New York City, January 5, 1978." Do you see

01:00:16 -- do you see that, sir?

01:00:18 MR. NIELDS: Do you see that line on the

01:00:18 document?

01:00:18 MR. GORDON: Right.

01:00:20 A. I see the line.

01:00:22 Q. And the first line of the text of this exhibit

01:00:26 is, quote, "At Mr. Goldsmith's request, Dr. Seligman,

01:00:30 Mr. Holtzman and I met with Dr. Gardner, Dr. Hockett

01:00:34 and Mr. Hoyt at CTR offices in New York. The

01:00:36 objective was to review the contracts carried out by

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01:00:40 7 Microbiological Associates, namely, contract 14 and
01:00:42 8 contract 25. It is contract 14 that earlier
01:00:44 9 concerned Osdene." Do you see that, sir?
01:00:46 10 A. I see that.
01:00:48 11 Q. Do you see those lines? Okay. And Mr.
01:00:52 12 Goldsmith was a senior Philip Morris executive in
01:00:54 13 1978; correct, sir?
01:00:56 14 A. Same response.
01:01:00 15 Q. Dr. Seligman was your superior in the research
01:01:02 16 and development group; is that correct?
01:01:04 17 A. Same response.
01:01:06 18 Q. You were the Philip Morris director of research
01:01:08 19 in 1978; is that correct?
01:01:08 20 A. Same response.
01:01:12 21 Q. Mr. Holtzman was a Philip Morris lawyer, was he
01:01:12 22 not, sir?
01:01:14 23 A. Same response.
01:01:16 24 Q. Mr. Holtzman had no scientific training; isn't
25 that correct, sir?

01:01:18 1 A. Same response.
01:01:22 2 Q. And you met with senior scientific staff members
01:01:28 3 of CTR on January 5th, 1978. Do you see that, sir?
01:01:30 4 A. Same response.
01:01:36 5 Q. And I direct your attention to the final line of
01:01:40 6 the second paragraph, quote, "It is my recommendation
01:01:46 7 that CTR cease to work in the specific area of human
01:01:46 8 studies." Do you see that?
01:01:48 9 MR. NIELDS: You are directing his

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01:01:50 10 attention to the last line of second paragraph?
01:01:50 11 MR. GORDON: That's right.
01:01:52 12 A. I see the line.
01:01:54 13 Q. And your recommendations concerning the work
01:02:00 14 that CTR was doing was inconsistent with the CTR
01:02:06 15 limitation of powers; correct?
01:02:06 16 MR. WEBB: Objection.
01:02:12 17 MS. De KOCK: Objection.
01:02:14 18 A. Same response.
19 (Plaintiff's Deposition Exhibit 1525 was
20 marked for identification.)
01:02:38 21 BY MR. GORDON:
01:02:52 22 Q. Dr. Osdene, I'm showing you a document marked
01:02:54 23 Exhibit 1525, a document produced by Philip Morris in
01:03:00 24 discovery bearing Bates stamp number 2021016008
01:03:06 25 through 6010. This is a memorandum dated November

01:03:12 1 13, 1978 from T. S. Osdene to file. Do you see that,
01:03:12 2 sir?
01:03:14 3 MR. NIELDS: Do you mean do you see those
01:03:16 4 words on the document? He's drawing your attention
01:03:16 5 to the top part.
01:03:18 6 A. Yes.
01:03:20 7 Q. Do you see the subject says, quote,
01:03:24 8 "Recommendations for Long-Term Plans for CTR"?
01:03:26 9 MR. NIELDS: Again he is calling your
01:03:28 10 attention to the subject line of the document.
01:03:28 11 A. I do.

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01:03:30 12 Q. I direct your attention to the first paragraph
01:03:32 13 this of this memo. Quote, "After twenty-five years
01:03:34 14 of existence, CTR as originally structured may have
01:03:38 15 outlived its usefulness, especially in the area of
01:03:40 16 P.R. As a consequence, it is recommended that the
01:03:44 17 following restructuring be undertaken." Do you see
01:03:44 18 that line, sir?
01:03:46 19 MR. NIELDS: He is calling your attention
01:03:46 20 to the first paragraph?
01:03:48 21 A. I see the line.
01:03:50 22 Q. And P.R. refers to public relations; correct?
01:03:50 23 A. Same response.
01:03:52 24 Q. And that's public relations for the benefit of
01:03:54 25 the significant delay; correct, sir?

01:03:56 1 MS. De KOCK: Objection.
01:03:56 2 A. Same response.
01:04:00 3 Q. And in fact you believe CTR should be a public
01:04:02 4 relations tool of the cigarette industry; correct,
5 sir?
01:04:04 6 MR. WEBB: Objection.
01:04:04 7 A. Same response.
01:04:06 8 Q. And indeed that was the prevailing view of
01:04:08 9 Philip Morris throughout your tenure at Philip
01:04:10 10 Morris; correct?
01:04:10 11 MR. WEBB: Objection.
01:04:12 12 A. Same response.
01:04:12 13 Q. And indeed that was the view of the entire
01:04:16 14 cigarette industry throughout your period of

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involvement at Philip Morris; correct, sir?

MR. WEBB: Objection.

A. Same response.

Q. The first recommendation that you make on Exhibit 1525 is, quote, "Future plans and programs should be relevant to the needs of the industry." Do you see that, sir?

A. Same response.

Q. And that would be inconsistent with the limit of powers as originally announced to the public for CTR; correct, sir?

MS. De KOCK: Objection.

A. Same response.

Q. And number 2 states, quote, "CTR should be controlled both legally and scientifically by representatives of the industry." Do you see that, sir?

A. Same response.

Q. And continuing on with that same paragraph, quote, "Implicit in the above, the SAB should be constituted with a majority of industry members. Several outside members (but not a majority) should be nominated to the SAB. These members should not have access to CTR funding. Do you see those lines, sir?

A. Same response.

Q. And the SAB refers to the Scientific Advisory

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01:05:20 17 Board; correct?

01:05:20 18 A. Same response.

01:05:24 19 Q. And that is the group that the public was told

01:05:28 20 was a group of independent scientists deciding what

01:05:34 21 research to conduct with CTR money; correct?

01:05:34 22 MS. De KOCK: Objection.

01:05:34 23 A. Same response.

01:05:40 24 Q. And in number 3 you recommend, quote, "CTR

01:05:42 25 should fund work largely by means of contracts, thus

01:05:46 1 reserving the trial right to control publication that

01:05:48 2 might be detrimental to the industry." Do you see

01:05:48 3 that, sir?

01:05:48 4 A. Same response.

01:05:52 5 Q. And that is in fact what CTR did from that point

01:05:52 6 on; correct, sir?

01:05:54 7 MS. De KOCK: Objection.

01:05:54 8 MR. WEBB: Objection.

01:05:56 9 A. Same response.

01:05:58 10 Q. Number 4, "The CTR staff should be more

01:06:02 11 responsive to industry needs and should report

01:06:04 12 frequently to the SAB." Do you see that

01:06:04 13 recommendation, sir?

01:06:04 14 A. Same response.

01:06:06 15 Q. And your fifth recommendation is: "The

01:06:08 16 long-term scientific program should be carefully

01:06:12 17 planned such that the results obtained should not be

01:06:14 18 able to harm the industry. Recommendations for

01:06:18 19 scientific program will be given later." Do you see

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01:06:18 20 that, sir?

01:06:20 21 A. Same response.

01:06:24 22 Q. And the seventh -- sixth recommendation is:

01:06:26 23 "Consideration should be given to whether CTR should

01:06:28 24 establish its own labs." Do you see that?

01:06:30 25 A. Same response.

01:06:32 1 Q. The seventh recommendation is: "There should be

01:06:36 2 a greater participation by industry scientists in

01:06:40 3 contracts and/or grants given by CTR. This should

01:06:42 4 include site visits, interim monitoring of results as

01:06:44 5 well as disposition of final results. In addition

01:06:46 6 there should be more complete feedback to the

01:06:48 7 industry sponsors." Do you see that, sir?

01:06:50 8 A. Same response.

01:06:54 9 Q. And attached to this memo is a two-page list of

01:06:58 10 scientific studies prepared by you; correct, sir?

01:07:00 11 A. Same response.

01:07:04 12 Q. The first page, which is actually the second

01:07:08 13 page of Exhibit 125, is a list of 17 studies

01:07:12 14 entitled, quote, "POTENTIAL LONG-TERM SCIENTIFIC

01:07:14 15 STUDIES." Do you see that, sir?

01:07:14 16 A. Same response.

01:07:16 17 Q. And these were the studies that you were

01:07:18 18 proposing be funded by CTR; correct?

01:07:20 19 A. Same response.

01:07:24 20 Q. Now the next page of this exhibit is entitled,

01:07:28 21 quote, "SUBJECTS TO BE AVOIDED"; correct?

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01:07:28 22 A. Same response.
01:07:30 23 Q. And this was your recommendation of subject
01:07:36 24 areas which CTR should be avoiding doing research in;
25 correct?

01:07:36 1 A. Same response.
01:07:38 2 Q. And the first subject to be avoided is, quote,
01:07:44 3 "Developing new tests for carcinogenicity." Do you
01:07:44 4 see that, sir?
01:07:46 5 A. Same response.
01:07:48 6 Q. And the second subject to be avoided is, quote,
01:07:52 7 "Attempt to relate human disease to smoking." Do
01:07:52 8 you see that, sir?
01:07:52 9 A. Same response.
01:07:54 10 Q. And the third recommendation for a subject to be
01:07:58 11 avoided is, quote, "Conduct experiments which require
01:08:04 12 large doses of carcinogen to show addictive effect of
01:08:06 13 smoking." Do you see that, sir?
01:08:06 14 A. Same response.
01:08:08 15 Q. And it was your recommendation in this
01:08:12 16 memorandum that CTR avoid any research in areas that
01:08:16 17 would develop new tests for carcinogenicity, attempt
01:08:20 18 to relate human disease to smoking or conduct
01:08:24 19 experiments requiring large doses of carcinogen to
01:08:26 20 show additive effects of smoking; correct, sir?
01:08:28 21 A. Same response.
22 (Plaintiff's Deposition Exhibit 1526 was
23 marked for identification.)
01:08:58 24 BY MR. GORDON:

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01:09:04 25 Q. Dr. Osdene, I'm showing you what's been marked

01:09:08 1 Exhibit 1526, a document produced in discovery by
01:09:14 2 Philip Morris bearing Bates stamp -- I apologize.
01:09:16 3 This may not have been a Philip Morris production.
01:09:20 4 The Bates stamp numbers are only nine digits. I
01:09:26 5 believe this was a Lorillard production. The Bates
01:09:30 6 stamp number is 01347175 through 177. This is a
01:09:36 7 letter dated March 31st, 1980, from Bob Seligman to
01:09:40 8 Dr. Alex Spears at P. Lorillard. Do you see that?
01:09:40 9 MR. NIELDS: He is calling your attention
01:09:44 10 to the signature under the addressee.
01:09:44 11 A. I see that.
01:09:46 12 Q. And at the very bottom left corner it indicates
01:09:50 13 a carbon copy was sent to Dr. T. S. Osdene. Do you
01:09:50 14 see that?
01:09:52 15 A. Same response.
01:09:56 16 Q. And in this letter, Dr. Seligman, on Philip
01:10:00 17 Morris U.S.A. letterhead, writes to Dr. Spears at
01:10:04 18 Lorillard in Greensboro, North Carolina, quote, "Dear
01:10:08 19 Alex, Mr. J. C. Bowling of our York New York office
01:10:10 20 asked that I send you our recommendations for
01:10:12 21 industry research which we prepared last year. To
01:10:16 22 that end you will find attached a list entitled,
01:10:18 23 quote, 'Potential Long-Term Scientific Studies,'
01:10:22 24 which Dr. Osdene and I generated early last year.
01:10:28 25 Additionally, I have added a list of three subjects

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01:10:28 which I feel should be avoided. If you have any
01:10:32 questions, please let me know, Very truly yours, Bob
01:10:34 Seligman." Do you see what I just read?
01:10:34 A. Same response.
01:10:40 Q. And the attachment of the potential long-term
01:10:44 scientific studies and the subjects to be avoided are
01:10:46 in fact the very same attachments that were included
01:10:54 in your memorandum that we have marked as Exhibit
01:10:56 1525; correct?
01:10:56 A. Same response.
01:11:06 Q. In 1980, Dr. Alex Spears was the person
01:11:12 appointed by the cigarette industry to oversee the
01:11:14 affairs of CTR; correct?
01:11:14 A. Same response.
01:11:22 Q. Did Alex Spears of Lorillard incorporate the
01:11:26 suggestions made by Philip Morris about subjects to
01:11:34 be avoided in governing the activities of the CTR?
01:11:36 A. Same response.

(Plaintiff's Deposition Exhibit 1527 was marked for identification.)

01:12:10 BY MR. GORDON:
01:12:16 Q. Dr. Osdene, I'm showing you what's been marked
01:12:20 as Exhibit 1527, a document produced in discovery by
01:12:24 Philip Morris bearing Bates stamp number 2021016004
01:12:28 through 6005, a memorandum dated January 8, 1979 from

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01:12:34 T. S. Osdene to Dr. R. B. Seligman. Do you see that?
01:12:38 MR. NIELDS: You can draw your attention --
01:12:40 He is drawing your attention to the top part of the
01:12:40 document.
01:12:40 A. I see that.
01:12:44 Q. The subject indicated on this is, quote, "Areas
01:12:48 of Research Supported by CTR." Do you see that?
01:12:48 MR. NIELDS: He is drawing your attention
01:12:50 to the subject line?
01:12:50 A. Yes.
01:12:52 Q. I direct your attention to the first numbered
01:12:56 paragraph, the one numbered number (1), quote, "I
01:12:58 consider the production of lung cancer in tissues of
01:13:04 animal laboratories a most undesirable undertaking by
01:13:06 the industry's point of view...." Do you see that
01:13:08 line, sir?
01:13:10 MR. NIELDS: He is drawing your attention
01:13:12 to the first three lines under (1).
01:13:12 A. Yes.
01:13:14 Q. During 1971, you were very concerned about any
01:13:18 studies that might demonstrate lung cancer in the
01:13:20 tissues of animal laboratories because it would be
01:13:22 undesirable from the industry -- the cigarette
01:13:26 industry's point of view; correct, sir?
01:13:26 MR. WEBB: Objection.

01:13:26 A. Same response.
01:13:30 Q. And if you -- I direct your attention further

http://legacy.library.ucsf.edu/tid/wmn05a00/pdf Source: http://industrydocuments.ucsf.edu/docs/pyhd0001

01:13:32 3 down to the first unnumbered paragraph after the
01:13:34 4 numbered paragraphs where you see, quote, "I see the
01:13:38 5 trend throughout the report that the obsession for
01:13:40 6 producing cancers in animals continues." Do you see
01:13:42 7 that?
01:13:42 8 MR. NIELDS: He is drawing your attention
01:13:44 9 to this.
01:13:44 10 A. I see that line.
01:13:48 11 Q. And just so the record is clear, this document,
01:13:54 12 this 1979 document, predates the letter that we have
01:13:58 13 marked as Exhibit 1526 from Dr. Seligman to Dr.
01:14:04 14 Spears dated March 31st, 1980 wherein Dr. Seligman
01:14:08 15 included your list of subjects to be avoided;
16 correct?
01:14:08 17 A. Same response.
01:14:18 18 MR. NIELDS: Are we finished with this
01:14:18 19 document?
01:14:18 20 MR. GORDON: Yes.
01:14:20 21 MR. NIELDS: We would love it if we could
01:14:22 22 get a brief break.
01:14:24 23 MR. GORDON: One more document in this
01:14:26 24 section and then can we have a break?
01:14:26 25 MR. NIELDS: That's fine, that's fine.

01:14:28 1 MR. GORDON: Three more minutes.
01:14:30 2 MR. NIELDS: That's fine, we can last that
01:14:30 3 long.
4 (Plaintiff's Deposition Exhibit 1528 was

http://legacy.library.ucsf.edu/tid/wmp05a00/pdf Source: http://industrydocuments.ucsf.edu/docs/pyhd0001

marked for identification.)

01:14:52 BY MR. GORDON:

01:15:00 Q. Dr. Osdene, I'm showing you what's been marked

01:15:02 as Exhibit 1528, a document produced in discovery by

01:15:08 Philip Morris bearing Bates stamp number 2015040939

01:15:12 through 0944, a document entitled, quote, "SUGGESTED

01:15:14 GUIDELINES FOR INDUSTRY COMMITTEE FOR THE REVIEW OF

01:15:18 INDUSTRY'S OVERALL INDEPENDENT SCIENTIFIC RESEARCH

01:15:20 EFFORT." Do you see that?

01:15:20 MR. NIELDS: He is draw your attention to

01:15:22 the --

01:15:24 A. Yes.

01:15:24 MR. NIELDS: -- capital letters there.

01:15:26 Q. Do you know who authored this document, sir?

01:15:28 A. Same response.

01:15:30 Q. And I draw your attention to the first

01:15:36 paragraph, quote, "To determine the Industry's short

01:15:38 and long term objectives for its independent

01:15:42 scientific research, and to establish priorities with

01:15:44 respect to that research. The thrust of such

01:15:46 deliberations should probably be consideration of the

01:15:50 impact of that research upon, among other things:

01:15:54 1. Legislative and regulatory matters. The

01:15:56 impact of our research on Congress, legislatures and

01:15:58 other regulatory agencies.

01:16:00 2. Advancement of the state of scientific

01:16:02 knowledge, for use in both positive and defensive

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01:16:04 7 situations.

01:16:06 8 3. Public relations:

01:16:08 9 (a) Establishing credibility for the

01:16:10 10 Industry and its products with consumers, and

01:16:14 11 re-inforcing consumers with respect to the smoking

01:16:16 12 and health controversy.

01:16:18 13 (b) Emphasizing to scientific and medical

01:16:20 14 communities the sincerity and magnitude of our

01:16:24 15 commitment to advancing the state of scientific

01:16:24 16 knowledge.

01:16:28 17 4. Media Relations. Furnishing the mass and

01:16:30 18 scientific media with results of tangible and

01:16:32 19 significant independent research that demonstrates

01:16:34 20 the sincerity and magnitude of the industry's

01:16:38 21 commitment to support independent research which will

01:16:40 22 assist in closing gaps in knowledge in the area of

01:16:40 23 smoking and health. "

01:16:42 24 And, 5, "Relationship with members of scientific

01:16:44 25 and medical communities relating to litigation,

01:16:50 1 establishing credibility for the industry with these

01:16:50 2 communities for practical application in litigation

01:16:54 3 and other adversary proceedings such as Congressional

01:16:58 4 and regulatory hearings." Do you see those lines

01:16:58 5 I've just read?

01:17:00 6 MR. NIELDS: He is drawing your attention

01:17:02 7 to the first page and top part of the second.

01:17:04 8 A. I see those lines.

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01:17:04 9 Q. And one of the purposes of the cigarette
01:17:06 10 industry's so-called independent research was to
01:17:10 11 reinforce consumers with the belief that there still
01:17:12 12 was a smoking-and-health controversy; correct?
01:17:14 13 MR. WEBB: Objection.
01:17:16 14 MS. De KOCK: Objection.
01:17:16 15 A. Same response.
01:17:24 16 MR. GORDON: Okay, we can take a break.
01:17:32 17 THE REPORTER: Off the record.
01:17:32 18 (Recess taken from 10:58 to 11:13 a.m.)
19 (Plaintiffs' Deposition Exhibits 1529
20 through 1531 were marked for
21 identification.)
01:17:54 22 BY MR. GORDON:
01:17:56 23 Q. Dr. Osdene, I'd like to show you what's been
01:18:00 24 marked as Exhibit 1529, a document produced in
01:18:02 25 discovery by Philip Morris bearing Bates stamp

01:18:08 1 1003293588, a memorandum dated November 3, 1977 from
01:18:12 2 Dr. W. L. Dunn to Dr. T. S. Osdene concerning a
01:18:16 3 proposed study by Levy, and I'm going to read the
01:18:18 4 memo in its entirety. Quote, "I have given Carolyn
01:18:22 5 approval to proceed with this study. If she is able
01:18:24 6 to demonstrate as she anticipates, no withdrawal
01:18:28 7 effects of nicotine, we will want to pursue this
01:18:32 8 avenue with some vigor. If, however, the results
01:18:34 9 with nicotine are similar to those gotten with
01:18:36 10 morphine and caffeine, we will want to bury it.

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01:18:40 Accordingly, there are only two copies of this memo,
01:18:42 the one attached and the original which I have."
01:18:44 Do you see what I've just read, sir?
01:18:48 MR. NIELDS: Wait. He is drawing your
01:18:50 attention to the whole document.
01:18:54 MR. WEBB: Mr. Gordon, what's the number on
01:18:56 that exhibit?
01:18:56 MR. GORDON: 1529.
01:18:58 MR. WEBB: Thank you.
01:18:58 A. Yes, I see it.
01:19:02 Q. And "Carolyn" refers to Carolyn Levy, one of
01:19:04 researchers in the research and development
01:19:06 department in 1977; correct?
01:19:06 A. Same response.
01:19:10 Q. And Carolyn Levy in fact conducted the study

01:19:12 that is discussed here to determine whether or not
01:19:18 there were withdrawal effects of nicotine; correct?
01:19:18 A. Same response.
01:19:22 Q. And withdrawal effects are one of the factors to
01:19:24 consider as to whether or not a substance is
01:19:26 addicting; correct?
01:19:26 A. Same response.
01:19:30 Q. And if there are no withdrawal effects, that
01:19:32 would be one factor to suggest that a particular
01:19:34 substance is not addicting; correct?
01:19:34 A. Same response.
01:19:36 Q. But if there are withdrawal effects, that would
01:19:40 be a factor suggesting that a particular substance is

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Source: https://www.industrydocuments.ucsf.edu/docs/pyhd0001

01:19:42 14 addicting; correct, sir?
01:19:42 15 A. Same response.
01:19:44 16 Q. And in the case of morphine, for example,
01:19:48 17 morphine is an addicting drug; correct?
01:19:50 18 A. Same response.
01:19:52 19 Q. And morphine does show withdrawal effects to
01:19:54 20 people who are addicted to it; correct?
01:19:56 21 A. Same response.
01:19:58 22 Q. And in this study, Carolyn Levy was trying to
01:20:02 23 determine if nicotine showed similar withdrawal
01:20:04 24 effects to morphine or no withdrawal effects;
25 correct?

01:20:06 1 A. Same response.
01:20:08 2 Q. And she anticipated, according to this memo,
01:20:10 3 that her study would show that there are no
01:20:12 4 withdrawal effects of nicotine; correct?
01:20:12 5 A. Same response.
01:20:18 6 Q. And if that had proven to be the case, Philip
01:20:26 7 Morris would have vigorously pursued research in that
01:20:32 8 area and disclosed to the public it's findings to
01:20:36 9 exonerate nicotine from the claim that it is
01:20:36 10 addictive; correct?
01:20:38 11 MR. WEBB: Objection.
01:20:38 12 A. Same response.
01:20:42 13 Q. And in fact when Carolyn Levy did this study,
01:20:44 14 she found out that nicotine did have withdrawal
01:20:44 15 effects similar to morphine; correct?

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01:20:46 16 MR. WEBB: Objection.
01:20:46 17 A. Same response.
01:20:50 18 Q. And in fact no report of the study was ever
01:20:52 19 prepared by Carolyn Levy, was it, sir?
01:20:54 20 MR. WEBB: Objection.
01:20:54 21 A. Same response.
01:20:56 22 MR. GORDON: I want to know what the nature
01:20:58 23 of that objection is, counsel.
01:21:00 24 MR. WEBB: The objection is to form of the
01:21:02 25 question and it assumes I believe an event that you

01:21:04 1 are not going to be able to in good faith establish.
01:21:08 2 MR. GORDON: No. Counsel, I'll be happy to
01:21:10 3 withdraw that objection if Philip Morris will produce
01:21:12 4 a copy of a report prepared by Carolyn Levy. This
01:21:14 5 was -- And I understand you are relatively new to
01:21:20 6 this litigation, but this was the subject of a series
01:21:22 7 of correspondence and meet and confer and we asked
01:21:26 8 Philip Morris to produce copies of any reports
01:21:28 9 prepared and Philip Morris represented to us that no
01:21:30 10 report was ever prepared. If you have some
01:21:34 11 information that is contrary to that, sir, then I
01:21:36 12 would encourage you on behalf of Philip Morris to
01:21:40 13 ensure that Philip Morris changes the position it has
01:21:44 14 taken in prior correspondence to us and produce a
01:21:48 15 copy of a report which at least up to now Philip
01:21:50 16 Morris has represented has never existed.
01:21:52 17 MR. WEBB: My objection stands, counsel.
01:21:54 18 MR. GORDON: Are you aware of a report

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01:21:54 19 that --

01:21:56 20 MR. WEBB: Counsel, my understanding is

01:22:00 21 that the whole purpose of making the objections is

01:22:02 22 not to have an argument on the record about it at

01:22:04 23 this point. My objection stands.

01:22:04 24 MR. GORDON: Counsel, if you have a

01:22:10 25 good-faith basis for objecting to that question as

01:22:10 1 you stated, that it assumes facts not in evidence,

01:22:16 2 I'd like to know the basis of that is given Philip

01:22:18 3 Morris as told us there is no report prepared.

01:22:20 4 MR. WEBB: I said my objection stands for

01:22:22 5 the record. You may proceed.

01:22:24 6 MR. GORDON: Are you withdrawing the

01:22:24 7 objection?

01:22:24 8 MR. WEBB: I'm not withdrawing the

9 objection.

01:22:26 10 MR. GORDON: So are you stating on the

01:22:28 11 record you have a good-faith basis for your

01:22:28 12 objection?

01:22:32 13 MR. WEBB: I just stated that on the

14 record.

01:22:32 15 MR. GORDON: Then I'd like to know when

01:22:36 16 that report has been prepared and why it hasn't been

01:22:36 17 produced to us.

01:22:38 18 MR. WEBB: Counsel, I just -- my objection

01:22:42 19 stands at this point; I don't intend to argue the

01:22:42 20 matter at this point.

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01:22:50 21 MR. GORDON: Well I want to note for the
01:22:52 22 record the impropriety of making an objection if you
01:22:54 23 don't have a basis for doing so and if you are
01:22:58 24 objecting to my question about the lack of the
01:23:00 25 existence of a report of Carolyn Levy's study because

01:23:04 1 you believe that there is a report, I want -- I want
01:23:06 2 the record clear that is directly contrary to the
01:23:08 3 representations that have been made to Philip Morris
01:23:10 4 to us in this litigation and you have an obligation
01:23:12 5 on behalf of your client to correct that record.
01:23:16 6 If, on the other hand, you are simply out of
01:23:18 7 thin air pulling out an objection because you don't
01:23:20 8 like the sound of the question, then I think you are
01:23:24 9 not acting in good faith and you better withdraw the
01:23:24 10 objection.
01:23:26 11 MR. WEBB: I'm not withdrawing the
01:23:26 12 objection.
01:23:28 13 MR. GORDON: Then I want to see the report
01:23:30 14 that Philip Morris up to now has told us never
01:23:30 15 existed.
01:23:34 16 MR. WEBB: Counsel, I said you can sit
01:23:36 17 here, proceed, do anything you want to do.
01:23:38 18 MR. GORDON: I think the record is clear
01:23:42 19 that we are insisting on this report and we are -- we
01:23:44 20 also want to know why Philip Morris up until today
01:23:46 21 has left -- has been content to leave us with the
01:23:50 22 representation that no report was ever prepared or
01:23:52 23 existed and no report has ever been produced to us.

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01:23:54 24 BY MR. GORDON:

01:24:02 25 Q. Going back to Exhibit 1529, Dr. Osdene, Philip

01:24:04 1 Morris never publicly disclosed the results of

01:24:06 2 Carolyn Levy's study, did it?

01:24:06 3 A. Same response.

01:24:14 4 Q. Direct your attention now to Exhibit 1530, a

01:24:14 5 document produced in discovery by Philip Morris

01:24:20 6 bearing Bates stamp 1000127111 through 112, an

01:24:28 7 exhibit bearing Bates -- or dated September 6, 1975,

01:24:30 8 a handwritten memo from R. B. -- from the desk of

01:24:34 9 R. B. Seligman to Dr. T. S. Osdene, and I direct your

01:24:36 10 attention to -- well, I'll read the memo in its

01:24:40 11 entirety: The weight info, as we discussed. Perhaps

01:24:42 12 the attached should be destroyed when you are

01:24:44 13 finished, RBS."

01:24:48 14 And my question to you, sir, is: Was that a

01:24:52 15 common practice at Philip Morris, to destroy data

01:24:52 16 after it was reviewed?

01:24:54 17 A. Same response.

01:24:58 18 Q. Now I'd like to direct your attention to Exhibit

01:25:02 19 1531, a memorandum -- a letter produced in discovery

01:25:04 20 by Philip Morris bearing Bates stamp number

01:25:10 21 1005215312, a letter dated May 2, 1985 from Thomas S.

01:25:14 22 Osdene, Ph.D., Director of Science and Technology, to

01:25:16 23 Dr. Victor J. DeNoble, Senior Scientist,

01:25:20 24 Electrophysiology Pharmacology, Ayerst Laboratories

01:25:24 25 Research, Inc., and in particular I direct your

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01:25:28 attention to -- well, I'll read the letter in its
01:25:30 entirety. "Dear Vic: As mentioned in our recent
01:25:32 telephone conversation, we have carefully considered
01:25:36 your and Paul Mele's request of March 5th regarding
01:25:38 publication of the 1983 Neuroscience abstract. A
01:25:40 decision has been made, based upon proprietary
01:25:44 considerations, not to grant permission for
01:25:46 publication of this abstract."
01:25:50 First of all, Dr. DeNoble and Dr. Mele were at
01:25:52 one time researchers in the Philip Morris research
01:25:56 and development department under your direction;
correct?
01:25:56 A. Same response.
01:26:00 Q. And the areas of activity, of research activity
01:26:02 of Dr. DeNoble and Dr. Mele included studies to
01:26:06 demonstrate the reinforcing properties of nicotine in
01:26:08 rats; correct, sir?
01:26:08 A. Same response.
01:26:14 Q. And in this letter of 1985, you were telling Dr.
01:26:16 DeNoble that Philip Morris was denying him permission
01:26:22 to publish research regarding his findings linking
01:26:26 nicotine and reinforcing characteristics in rats;
correct, sir?
01:26:26 A. Same response.
(Plaintiff's Deposition Exhibit 1532 was

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marked for identification.)

BY MR. GORDON:

Q. Dr. Osdene, I'm showing you Exhibit 1532, a document produced by Philip Morris in -- Strike that.

Dr. Osdene, I'm showing you Exhibit 1532, a document produced in discovery by the British American Tobacco Company, Limited bearing Bates stamp number 100064185. This is a letter on Philip Morris Incorporated letterhead dated May 28, 1968 from T. S. Osdene, manager of chemical and biological research division, to Dr. D. G. I. Felton, Research & Development Establishment, British American Tobacco Company in England, and I will read the first paragraph. "Dear Geoff: It was great seeing you again after all this time. Both Ray Fagan and I thoroughly enjoyed our visit and the discussion we had with you, Dr. Green, and Dr. Hughes. It is always informative to get an exchange of views which face all of us in the industry."

Dr. Osdene, this letter was sent by you to Dr. Felton to British American Tobacco after you and Dr. Fagan of Philip Morris had met with Dr. Felton, Dr. Green and Dr. Hughes of British American Tobacco; correct?

A. Same response.

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01:28:08 2 Q. And it was common for you and other scientists
01:28:12 3 at Philip Morris to meet with -- Strike that.
01:28:16 4 It was common for you and other scientists at
01:28:20 5 Philip Morris to meet with scientists of British
01:28:22 6 American Tobacco and exchange views facing the
01:28:24 7 cigarette industry; correct?
01:28:24 8 A. Same response.
01:28:28 9 MR. GORDON: Have that marked, please.
10 (Plaintiff's Deposition Exhibit 1533 was
11 marked for identification.)
01:29:06 12 BY MR. GORDON:
01:29:18 13 Q. Dr. Osdene, I'm showing you what's been marked
01:29:20 14 as Exhibit 1533, a document produced in discovery by
01:29:24 15 British American Tobacco Company bearing Bates stamp
01:29:30 16 number 10 -- excuse me -- Bates stamp 110316203
01:29:34 17 through 205. This is a memorandum dated on the last
01:29:38 18 page March 11, 1970, and is a memorandum entitled
01:29:42 19 "SUPPLEMENTARY REPORT ON DISCUSSIONS WITH OSDENE
01:29:46 20 paren PHILIP MORRIS close paren," and this memorandum
01:29:50 21 summarizes discussion that scientists from B.A.T. had
01:29:52 22 with you, sir; correct?
01:29:52 23 A. Same response.
01:29:56 24 Q. And I direct your attention to the middle of the
01:30:00 25 page, under paragraph (b), the middle of the

01:30:04 1 paragraph, quote, "Listening to Osdene on the subject
01:30:08 2 of U.S. lawyers was very reminiscent of conversations
01:30:10 3 with Griffith. Osdene believes that the lawyers

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01:30:12 4 group has greater group-loyalty than
01:30:16 5 Company-loyalty. He particularly distrusts the 'ad
01:30:18 6 hoc legal adviser group' comprising Ed, Jacob and
01:30:22 7 Dave Hardy, but foresees a waning of their influence
01:30:24 8 in the future. Although relations with the
01:30:28 9 Government, etc. have been played the way the lawyers
01:30:30 10 have recommend in the past, the effect has been
01:30:34 11 largely nugatory. He believed Cullman (President of
01:30:36 12 Philip Morris) is far more willing to listen to
01:30:40 13 Wakeham than to Paul Smith." Do you see that?
01:30:42 14 MR. NIELDS: He is drawing your attention
01:30:44 15 to what's being --
01:30:44 16 A. I see that.
01:30:46 17 Q. Is that an accurate reflection of the comments
01:30:48 18 you made in 1970?
01:30:48 19 A. Same response.
01:30:50 20 Q. I direct your attention to the next paragraph,
01:30:54 21 quote: "Philip Morris have little time for American
01:30:56 22 Tobacco Co., who are dominated by lawsuits and whose
01:31:00 23 Law Department reign supreme. Quote, They take all
01:31:02 24 and contribute nothing, close quote. Reynolds have
01:31:08 25 been quite forthcoming but since 1st January 1970

01:31:10 1 have been embargoed from carrying out any in-house
01:31:14 2 biological work. Their biologists have been diverted
01:31:16 3 to other activities and their R&D activities are
01:31:18 4 controlled by the former head of U.K. marketing of
01:31:20 5 Campbell Soups." Do you see that?

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01:31:20 6 MR. NIELDS: He is drawing your attention
01:31:22 7 to (c).
01:31:24 8 A. He is.
01:31:26 9 Q. And that is an accurate -- Strike that.
01:31:30 10 That is an accurate summary of the comments that
01:31:34 11 you made in 1970 to representatives of B.A.T.;
12 correct?
01:31:34 13 A. Same response.
01:31:40 14 Q. And that reference to the embargo of in-house
01:31:44 15 biological research at Reynolds refers to a shutdown
01:31:46 16 of the in-house biological testing facilities at
01:31:48 17 Reynolds; correct?
01:31:48 18 A. Same response.
01:31:52 19 Q. And that was known colloquially as the "mouse
01:31:54 20 house"; correct?
01:31:56 21 A. Same response.
01:32:00 22 Q. And in fact, the shutting down of Reynolds'
01:32:02 23 biological work in the beginning of 1970 occurred
01:32:06 24 after Philip Morris' CEO, Joseph Cullman III,
01:32:10 25 contacted the president of Reynolds, Mr. Galloway,

01:32:12 1 and reminded him of an industry agreement not to do
01:32:16 2 in-house biological work; correct?
01:32:16 3 A. Same response.
01:32:18 4 Q. I direct your attention to the second page of
01:32:50 5 Exhibit 1533 -- Well, strike that. Let's move on.
6 (Plaintiff's Deposition Exhibit 1534 was
7 marked for identification.)
01:32:52 8 BY MR. GORDON:

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01:32:54 9 Q. Dr. Osdene, I'm showing you what's been marked
01:32:56 10 as Exhibit 1534, a document produced in discovery by
01:32:58 11 the British American Tobacco Company bearing Bates
01:33:06 12 stamp 109838010 through 8014, a document entitled
01:33:08 13 "VISIT TO PHILIP MORRIS R&D CENTRE RICHMOND,
01:33:12 14 VIRGINIA 30 OCTOBER 1980," and the people listed as
01:33:16 15 being present are Dr. L. C. F. Blackman, Mr. A. L.
01:33:20 16 Heard, Dr. R. Seligman and Dr. T. S. Osdene.
01:33:24 17 Dr. Blackman and Mr. Heard are representatives
01:33:24 18 of B.A.T.; correct?
01:33:26 19 A. Same response.
01:33:30 20 Q. And Dr. Seligman is being listed as being
01:33:34 21 vice president of R&D and Dr. Osdene is director of
01:33:36 22 research of extramural studies. Do you see that?
01:33:38 23 MR. NIELDS: He is directing your
01:33:38 24 attention --
01:33:38 25 A. I see it.

01:33:40 1 MR. NIELDS: -- to the top of the page.
01:33:42 2 MR. GORDON: Right.
01:33:42 3 A. Yeah.
01:33:46 4 Q. Now I want to direct your attention to the
01:33:46 5 middle of the page, under "Organization."
01:33:50 6 "According to Dr. Osdene, it took some 6 years
01:33:52 7 to bring about the present very close integration
01:33:54 8 between R&D and Marketing Production and leaf
01:33:58 9 operations; it clearly helps having central R&D
01:34:00 10 located at the very centre of the business.

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01:34:02 "There is also very close liaison between the
01:34:06 Richmond R&D centre (550 staff) and the similar
01:34:08 laboratories in Switzerland and Canada. Though the
01:34:10 latter laboratories have a high degree of
01:34:12 independence, there is complete management
01:34:14 interaction and complete integration of main
01:34:16 programmes with those at the centre."
01:34:22 My first question is: Sir, what laboratories
01:34:24 did Philip Morris have in Canada in 1980?
01:34:26 A. Same response.
01:34:30 Q. How long a period of time was Philip Morris
01:34:34 conducting research through laboratories in Canada?
01:34:34 A. Same response.
01:34:38 Q. And the laboratories in Switzerland refer to the
01:34:44 laboratories of FTR; correct?

01:34:44 A. Same response.
01:34:48 Q. And I direct your attention to the second --
01:34:52 second paragraph from the bottom of Exhibit 1534,
01:34:56 where it refers to, quote, "Dr. Osdene's Research and
01:35:00 Extramural Studies (the latter being a euphemism for
01:35:02 smoking and health) represents the main long-term
01:35:06 research thrust and accordingly has a high ratio of
01:35:08 scientists to assistants; 8 of the scientists are on
01:35:12 a Research Associate dual career structure."
01:35:16 My question, sir, is: The phrase "extramural
01:35:18 studies," you told people at B.A.T. that that was a
01:35:20 euphemism for smoking and health; correct, sir?
01:35:20 A. Same response.

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01:35:26 14 Q. Okay. Direct your attention to the second page,
01:35:28 15 in the middle of the page under the heading, quote,
01:35:32 16 "Smoking and Health," it states, quote: Officially
01:35:34 17 this activity does not exist; but in practice there
01:35:36 18 is a major research effort. We were given some
01:35:40 19 information on the understanding that we did not --
01:35:42 20 do not divulge it further. (I know also that Dr.
01:35:44 21 Felton last year was given a quite detailed
01:35:48 22 description of some of the work.)
01:35:50 23 And that was an accurate summary of the comments
01:35:52 24 that you and Dr. Seligman made to these
01:35:56 25 representatives of B.A.T. in 1980; correct?

01:35:56 1 A. Same response.
01:36:00 2 Q. It was the position of Philip Morris to publicly
01:36:02 3 deny that there was any research going on with
01:36:04 4 respect to smoking and health; correct?
01:36:04 5 MR. WEBB: Objection.
01:36:06 6 A. Same response.
01:36:16 7 Q. And under the next section, "Behavioural
01:36:20 8 Studies," it states, quote, "We understand there has
01:36:20 9 been a substantial increase in studies concerning
01:36:24 10 smoker behaviour in recent years - 8 psychologists
01:36:28 11 are now at work. Compensation is clearly one area of
01:36:30 12 interest, but I suspect like us they are attempting
01:36:32 13 to get information of direct commercial relevance."
01:36:36 14 That was an accurate summary of comments that you
01:36:40 15 made in 1982 to representatives of B.A.T.; correct?

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01:36:40 16 A. Same response.
01:36:42 17 Q. And the area -- the phrase "compensation" refers
01:36:46 18 to the area we talked about yesterday, demonstrating
01:36:50 19 that smokers will compensate for changes in the
01:36:54 20 amount of nicotine by adjusting their smoking
01:36:56 21 patterns to maintain a constant level of nicotine;
22 correct?
01:36:58 23 A. Same response.
01:37:00 24 Q. And that was the findings of the internal
01:37:04 25 research of Philip Morris, that smokers did indeed

01:37:04 1 compensate?
01:37:06 2 MR. WEBB: Objection.
01:37:06 3 A. Same response.
01:37:10 4 Q. Are you aware of any criminal conduct on behalf
01:37:14 5 of any scientists associated with the British
01:37:16 6 American Tobacco Company in the area of cigarette
01:37:18 7 smoking and health?
01:37:20 8 A. Same response.
9 (Plaintiff's Deposition Exhibit 1535 was
10 marked for identification.)
01:37:44 11 BY MR. GORDON:
01:37:48 12 Q. Showing you what's been marked as Exhibit 1535,
01:37:56 13 a document produced in discovery by -- by Brown &
01:37:56 14 Williamson Tobacco Company bearing Bates stamp number
01:38:04 15 512102900. This is a letter on Lorillard letterhead
01:38:08 16 dated December 17, 1984 from Dr. A. W. Spears,
01:38:10 17 executive vice president, operations and research,

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01:38:12 18 and it lists several people to whom the letter was
01:38:16 19 sent. You are one of the people listed as having
01:38:16 20 received this letter; correct?
01:38:18 21 A. Same response.
01:38:22 22 Q. And Dr. Robert A. Pages is also an individual
01:38:24 23 who received the letter; correct?
01:38:24 24 A. Same response.
01:38:30 25 Q. And Dr. Pages is -- was in 1984 on the research

01:38:32 1 and development staff of Philip Morris; correct?
01:38:32 2 A. Same response.
01:38:38 3 Q. Above your name on Exhibit 1535 is the name
01:38:42 4 Donald K. Hoel. Do you see that?
01:38:42 5 A. Same response.
01:38:46 6 Q. In 1984, Mr. Hoel was a lawyer with the Kansas
01:38:50 7 City law firm of Shook, Hardy & Bacon; correct?
01:38:50 8 A. Same response.
01:38:54 9 Q. And other individuals listed on this letter from
01:38:58 10 Dr. Spears of Lorillard include other scientific
01:39:02 11 representatives from other cigarette companies
01:39:04 12 besides Lorillard and Philip Morris; correct?
01:39:04 13 A. Same response.
01:39:08 14 Q. And the letter states in its entirety, quote,
01:39:10 15 "Gentlemen: Please find attached a summary of the
01:39:14 16 nicotine\cotinine study at Bartelle which I discussed
01:39:16 17 at our last meeting." Do you say that?
01:39:18 18 MR. NIELDS: You are directing his
01:39:20 19 attention to the body of the letter?
20 MR. GORDON: Right.

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01:39:20 21 A. Yes, I see that.
01:39:24 22 Q. And that refers to a study directly funded by
01:39:28 23 the industry and coordinating by lawyers of Shook,
01:39:30 24 Hardy & Bacon determining an accurate method of
01:39:34 25 measuring nicotine intake by smokers; correct?

01:39:36 1 A. Same response.
2 (Plaintiff's Deposition Exhibit 1536 was
3 marked for identification.)
01:40:02 4 BY MR. GORDON:
01:40:06 5 Q. Showing you what's marked as Exhibit 1536, a
01:40:14 6 document produced in discovery by a defendant other
01:40:16 7 than Philip Morris and it doesn't say on its face --
01:40:20 8 I believe it's Lorillard -- bearing Bates stamp
01:40:28 9 number 80404240, and this is a letter on the -- on
01:40:32 10 the letterhead of the law firm of Shook Hardy & Bacon
01:40:36 11 dated May 28, 1986, to several individuals including
01:40:38 12 you and Dr. Pages; correct?
01:40:44 13 MR. NIELDS: Well --
01:40:44 14 A. Same response.
01:40:46 15 Q. And I'll read the letter in its
01:40:48 16 entirety. "Gentlemen: As discussed at our last
01:40:52 17 Advisory Group meeting, I've enclosed a copy of the
01:40:54 18 Battelle-Columbus product on cotinine as well as
01:40:56 19 portions of the ALA annual meeting report which
01:41:02 20 relate to ETS." Do you see that, sir?
01:41:04 21 MR. NIELDS: He is drawing your attention
01:41:04 22 to the body of the letter.

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01:41:06 23 A. I see that.

01:41:08 24 Q. And this is a further letter referring to the

01:41:12 25 Battelle nicotine/cotinine study referred to in

01:41:14 1 Exhibit 1535; correct?

01:41:14 2 A. Same response.

01:41:18 3 Q. And coordination for this study occurred through

01:41:22 4 the law firm of Shook Hardy & Bacon; correct?

01:41:22 5 A. Same response.

01:41:26 6 Q. And indeed Shook Hardy & Bacon was throughout

01:41:30 7 your tenure at Philip Morris intimately involved in

01:41:32 8 conducting scientific research on

01:41:34 9 smoking-and-health-related issues, correct?

01:41:36 10 MR. WEBB: Objection.

01:41:36 11 A. Same response.

01:41:38 12 Q. And indeed, sir, it was the practice and

01:41:40 13 procedure of Philip Morris research and development

01:41:44 14 to routinely send research developments to lawyers

01:41:46 15 connected with Shook Hardy & Bacon in order to cloak

01:41:48 16 the research developments and the research reports

01:41:52 17 with attorney-client privilege; correct?

01:41:54 18 A. Same response.

01:41:54 19 MR. WEBB: Objection.

01:42:00 20 Q. Indeed, Philip Morris had in its own research

01:42:02 21 and development department rubber stamps that said

01:42:06 22 "attorney work product" and routinely applied those

01:42:10 23 rubber stamps to research reports whether or not any

01:42:12 24 attorney had been involved in any way in the

01:42:14 25 preparation of the research or the report; correct?

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01:42:14 MR. WEBB: Objection.

01:42:16 A. Same response.

01:42:26 MR. GORDON: Could we have Exhibits 164 and 148, please.

01:42:46 (Discussion off the stenographic record.)

01:44:20 BY MR. GORDON:

01:44:24 Q. Dr. Osdene, I'd like to show you first Exhibit 164, a document that was previously marked. This is a document produced by Philip Morris bearing Bates stamp number 1003293238 through 239, a memorandum from Dr. Wakeham to Dr. Seligman with carbon copies to Osdene and Dunn, and I want to direct your attention to the line in the first paragraph, quote, "I do not deny that many smokers maintain the habit for psychopharmacological reasons...." And you agreed with that position back in 1979 too as well, didn't you, sir?

01:44:56 A. Same response.

01:44:58 Q. And I direct your attention now to the first -- first numbered paragraph. Quote, "Young people obviously take up the habit for psychosocial reasons long before they become aware (either consciously or unconsciously) of the nicotine psychopharmacology." And that was an underlying principle of the Philip Morris research and development department during

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01:45:18 1 your tenure there; correct, sir?
01:45:18 2 A. Same response.
01:45:20 3 Q. And Philip Morris research was directed in part
01:45:24 4 to discovering ways to encourage young people to take
01:45:26 5 up the habit of cigarette smoking for psychosocial
01:45:28 6 reasons; correct?
01:45:28 7 MR. WEBB: Objection.
01:45:30 8 A. Same response.
01:45:34 9 Q. And I direct your attention now to number 3,
01:45:36 10 quote, "The oft repeated marketing concept that
01:45:40 11 smokers smoke for flavor is surely not entirely a
01:45:44 12 figment of marketing imagination." And in fact, the
01:45:48 13 prevailing view of the research and development
01:45:52 14 department was that smokers smoked primarily for
01:45:54 15 nicotine and not for flavor; correct?
01:45:54 16 A. Same response.
01:45:58 17 Q. And indeed the prevailing view of the Philip
01:46:00 18 Morris research and development department during
01:46:04 19 your tenure there was that the notion that smokers
01:46:10 20 smoked for flavor was primarily a marketing position
01:46:12 21 and not a scientifically based position; correct?
01:46:16 22 MR. WEBB: Objection.
01:46:18 23 A. Same response.
01:46:20 24 Q. And it was Philip Morris' scientists' belief
01:46:22 25 that smokers, once they started smoking, continued

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01:46:28 1 smoking because of the psychopharmacological effects
01:46:28 2 of nicotine; correct?
01:46:30 3 MR. WEBB: Objection.
01:46:30 4 A. Same response.
01:46:32 5 Q. Now I'd like to direct your attention to exhibit
01:46:46 6 148.
01:46:46 7 (Discussion off the stenographic record.)
01:46:52 8 BY MR. GORDON:
01:46:56 9 Q. Okay. Showing you what's been marked as Exhibit
01:47:00 10 148, a document produced in discovery by Philip
01:47:04 11 Morris bearing Bates stamp number 1003285497 through
01:47:10 12 502, a memorandum dated May 21st, 1975 from Myron
01:47:14 13 Johnston to Dr. R. B. Seligman with carbon copies
01:47:18 14 listed on the sixth page, several people including
01:47:18 15 Dr. T. Osdene.
01:47:24 16 In 1975, Myron Johnston was a researcher in the
01:47:24 17 research and development department under your
01:47:26 18 direction; correct?
01:47:26 19 A. Same response.
01:47:32 20 Q. And in this memorandum, Exhibit 148, Myron
01:47:38 21 Johnston is analyzing why Marlboro's growth rate has
01:47:44 22 declined in recent years. Do you see that? Or is
01:47:44 23 that what this memo says?
01:47:46 24 A. Same response.
01:47:48 25 Q. Okay. I'm going to read the last paragraph of

01:47:50 1 the first page. Quote, "It has been well established
01:47:52 2 by the National Tracking Study and other studies that
01:47:56 3 Marlboro has for many years had its highest market

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penetration among younger smokers. Most of these studies have been restricted to people age 18 and over, but my own data, which includes younger teenagers, shows even higher Marlboro market penetration among 15-17 year-olds. The teenage years are also important because those are the years during which most smokers begin to smoke, the years in which initial brand selections are made, and the period and the life-cycle in which conformity to peer-group norms is greatest." Do you see what I just read, sir?

MR. NIELDS: He is draw your attention to the lines at the bottom.

A. I see them.

Q. And indeed you were aware as director of research that Myron Johnston was keeping his own data on cigarette smoking among younger teenagers 15 to 17 years old, were you not, sir?

A. Same response.

Q. Indeed he was doing so with your expressed encouragement; correct, sir?

A. Same response.

Q. And the publicly stated position of Philip Morris that it did not want kids to smoke was actually a position taken strictly for public consumption and not the internal guiding philosophy of Philip Morris; correct?

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01:49:06 6 MR. WEBB: Objection.
01:49:06 7 A. Same response.
01:49:10 8 Q. And the reason Myron Johnston was tracking
01:49:14 9 children under the age of 18 was to assess the
01:49:18 10 effectiveness of Philip Morris' marketing efforts to
01:49:18 11 these children; correct?
01:49:20 12 MR. WEBB: Objection.
01:49:20 13 A. Same response.
14 (Plaintiff's Deposition Exhibit 1537 was
15 marked for identification.)
01:50:22 16 BY MR. GORDON:
01:50:24 17 Q. Dr. Osdene, I'm showing you a single-page
01:50:28 18 document marked Exhibit 1537 produced by Philip
01:50:36 19 Morris in discovery bearing Bates stamp 2023268339.
01:50:38 20 Do you know -- Strike that.
01:50:42 21 Do you have any explanation as to why Philip
01:50:44 22 Morris produced only this single page?
01:50:48 23 A. Same response.
01:50:50 24 Q. And this document is entitled "GENERAL COMMENTS
01:50:54 25 ON SMOKING AND HEALTH." The first line states,

01:50:56 1 quote, "In thinking about smoking and health, the
01:50:58 2 first thing that comes to...mind is product
01:51:02 3 liability." Do you know who authored this?
01:51:02 4 A. Same response.
01:51:08 5 Q. The document goes on to say, "Clearly, it is of
01:51:12 6 the gravest concern to all of us since it poses a
01:51:14 7 potential threat to the entire industry in most
01:51:18 8 places. As I see it, the best help we can offer is

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01:51:20 9 to make doubly certain that we do nothing overseas
01:51:24 10 that jeopardizes what is going on here." Do you know
01:51:30 11 what the concerns were that prompted the author of
01:51:34 12 this memo to write this?
01:51:36 13 A. Same response.
01:51:40 14 Q. And then I direct your attention to the final
01:51:42 15 paragraph: "Of all the concerns, there is one -
01:51:46 16 taxation - that alarms us the most. While marketing
01:51:48 17 restrictions and public and passive smoking do
01:51:52 18 depress volume, in our experience taxation depresses
01:51:54 19 it much more severely. Our concern for taxation is,
01:51:56 20 therefore, central to our thinking about smoking and
01:52:00 21 health. It has historically been the area to which
01:52:02 22 we have devoted most resources and for the
01:52:06 23 foreseeable future, I think things will stay that way
01:52:08 24 almost everywhere." And that is an accurate
01:52:12 25 statement of the philosophy underlying Philip Morris

01:52:12 1 during your tenure there; correct?
01:52:14 2 MR. WEBB: Objection.
01:52:14 3 A. Same response.
01:52:16 4 Q. And the reason Philip Morris was concern about
01:52:18 5 taxation was because Philip Morris knew that as taxes
01:52:22 6 went up cigarette consumption went down; correct?
01:52:24 7 MR. WEBB: Objection.
01:52:24 8 A. Same response.
01:52:30 9 Q. Do you recall being interviewed by a journalist
01:52:34 10 named Richard Kluger who was writing a book?

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01:52:34 11 A. Same response.
01:52:40 12 Q. And in fact the book Richard Kluger ultimately
01:52:44 13 wrote was called Ashes to Ashes.
01:52:44 14 A. Same response.
01:52:46 15 Q. Did you ever read the book Ashes to Ashes by
01:52:48 16 Richard Kluger?
01:52:50 17 A. Same response.
01:52:56 18 (Discussion off the stenographic record.)
19 (Plaintiff's Deposition Exhibit 1538 was
20 marked for identification.)
01:53:18 21 BY MR. GORDON:
01:53:22 22 Q. Dr. Osdene, I'm showing you what's been marked
01:53:30 23 as Exhibit 1538, a four-page document taken from a
01:53:36 24 collection of notes at the Yale University library
01:53:40 25 deposited by Richard Kluger, and the top of this

01:53:46 1 document says, "THOMAS S. OSDENE, Biochemist w/PM for
01:53:48 2 27 years starting in 19 -- starting in '65, rising to
01:53:52 3 dir. of science and technology in charge of co.'s
01:53:54 4 contract efforts and biological testing & later
01:53:58 5 overseeing its efforts in studying ETS...interviewed
01:54:04 6 at his home in Richmond 1608 Hanover Ave on
01:54:10 7 11-19-92....for BACKGROUND."
01:54:10 8 Were you interviewed by Mr. Kluger in 1992 at
01:54:14 9 your home at 1608 Hanover Avenue in Richmond?
01:54:14 10 A. Same response.
01:54:16 11 Q. And your understanding of the phrase "for
01:54:20 12 background" meant you were providing information Mr.

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01:54:22 13 Kluger could use in doing his research but that would
01:54:24 14 not be attributed to you; correct?
01:54:26 15 A. Same response.
01:54:30 16 Q. And the second paragraph of Exhibit 1538 states,
01:54:34 17 quote, A very heavy smoker himself, was up to 80
01:54:38 18 cigarettes a day before he quit w/nasty cough in
01:54:40 19 about '85. Do you see that line?
01:54:42 20 A. I see that line, yes.
01:54:44 21 Q. And is that accurate, that you had been smoking
01:54:46 22 up to 80 cigarettes a day before you quit in 1985?
01:54:48 23 A. Same response.
01:54:52 24 Q. Are you a smoker presently, sir?
01:54:52 25 A. Same response.

01:55:00 1 Q. And then further down in that paragraph it
01:55:02 2 states, quote, "Is there a relationship? Yes, of
01:55:06 3 course -- I'd be stupid to deny that -- but does it
01:55:08 4 'cause' the disease? The jury is still out on
01:55:12 5 that." Do you -- "ponders whether you could do
01:55:16 6 biological testing on cigs that proved to be 'inert'
01:55:16 7 (no 'activity' or tumors in bioassays by
01:55:18 8 skin-painting) & still have a viable product (one the
01:55:24 9 push would smoke)? It's a scientific conundrum...."
01:55:24 10 Do you see that?
01:55:26 11 MR. NIELDS: He is directing your attention
01:55:26 12 to the --
01:55:28 13 A. Yes.
01:55:28 14 Q. Is that an accurate -- is that an accurate
01:55:30 15 summary of the comments you made to Mr. Kluger?

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01:55:32 16 A. Same response.

01:55:36 17 Q. And further on down in the next paragraph it

01:55:42 18 says, "Thomas Osdene lobbied hard for biological labs

01:55:44 19 and finally got some." Is that an accurate summary

01:55:46 20 of comments you made to Mr. Kluger?

01:55:48 21 A. Same response.

01:55:52 22 Q. And initially you had to lobby hard to get

01:55:56 23 biological labs because Philip Morris' policy was to

01:55:58 24 not do biological testing; correct?

01:56:00 25 A. Same response.

01:56:02 1 Q. And you were told that the reason Philip Morris

01:56:06 2 did not do biological testing was because there was a

01:56:08 3 gentlemen's agreement in the industry not to do the

01:56:10 4 biological testing; correct?

01:56:12 5 MR. WEBB: Objection.

01:56:12 6 A. Same response.

01:56:18 7 Q. Direct your attention to the second page, the

01:56:22 8 second paragraph under "SCIENTIFIC SITUATION AT PM

01:56:28 9 AFTER '64 SGR APPEARS," SGR referring to surgeon

01:56:28 10 general's report; correct?

01:56:30 11 A. Same response.

01:56:32 12 Q. It says, quote, "There's a CONFLICT (IN THE CO.)

01:56:34 13 BETWEEN SCIENCE & THE LAW THAT'S NEVER BEEN

01:56:38 14 RESOLVED. There was total confusion after the SGR

01:56:42 15 appeared...'Paul Smith's was a dominant voice' & he

01:56:46 16 had Joe Cullman's att., also full of certitude &

01:56:48 17 urging great caution & stonewalling on the causation

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01:56:52 18 issue, giving no ground." Do you see that?

01:56:54 19 MR. NIELDS: He is referring to the --

01:56:56 20 A. Yes, I see that.

01:56:56 21 MR. NIELDS: -- comment right here.

01:57:00 22 Q. And Paul Smith was an in-house attorney at

01:57:02 23 Philip Morris in 1964; correct?

01:57:02 24 A. Same response.

01:57:06 25 Q. And Joe Cullman was the CEO of Philip Morris at

01:57:06 1 that time; correct?

01:57:08 2 A. Same response.

01:57:14 3 Q. And Paul Smith's urging of stonewalling on the

01:57:16 4 causation issue was ultimately the position that

01:57:20 5 Philip Morris adopted following the surgeon general's

01:57:22 6 report in 1964; correct?

01:57:24 7 A. Same response.

01:57:30 8 Q. And then further on it states, quote, "'That's

01:57:34 9 just what it was -- A BUNKER MENTALITY. If Helmut

01:57:38 10 Wakeham had run things I think there would have been

01:57:42 11 some admissions' but he was outflanked by the lawyers

01:57:44 12 led by Paul Smith...." Is that an accurate statement

01:57:46 13 -- accurate summary of what you told Mr. Kluger?

01:57:48 14 A. Same response.

01:57:50 15 Q. And that's an accurate statement of what was

01:57:52 16 happening at Philip Morris in the years following the

01:57:54 17 surgeons report in 1974; correct?

01:57:56 18 MR. WEBB: Objection.

01:57:56 19 A. Same response.

01:57:58 20 Q. And then further on down it says, quote, "The

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01:58:00 21 lawyers 'were saying, in effect, "My God, you can't
01:58:04 22 make that admission" without risking' liability
01:58:08 23 action vs. the co.," and that was something you told
01:58:10 24 Mr. Kluger as well; correct?
01:58:10 25 A. Same response.

01:58:12 1 Q. And that was the position of the lawyers at
01:58:14 2 Philip Morris following the surgeon general's report
01:58:16 3 in 1964; correct?
01:58:16 4 MR. WEBB: Objection.
01:58:18 5 A. Same response.
01:58:22 6 (Discussion off the stenographic record.)
02:00:24 7 BY MR. GORDON:
02:00:30 8 Q. Dr. Osdene, directing your attention back to the
02:00:36 9 Kluger notes, Exhibit 1538, page 2, towards the
02:00:40 10 bottom of the page, quote, "Thos Os. pushed for bio.
02:00:42 11 labs at Richmond "& eventually I got them" even while
02:00:46 12 battling the concerns of lawyers & Paul Smith;
02:00:50 13 succeeded by TOM AHRENSFELD, quote, who never wanted
02:00:54 14 us to get involved w/anything in R&D that might
02:00:58 15 redound the co.'s injury, e.g., biological
02:01:00 16 testing...he'd say, quote, 'Why fuck around with any
02:01:04 17 of that?' & he'd keep away 'but he'd beat your brains
02:01:06 18 out on the tennis court.'" That's an accurate
02:01:10 19 summary of statements you made to Mr. Kluger in 1992;
20 correct?
02:01:10 21 A. Same response.
02:01:18 22 Q. And that indeed is an accurate statement of what

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02:01:18 23 was happening at Philip Morris in the 1960s; that is,
02:01:20 24 that Paul -- lawyers Paul Smith and Thomas Ahrensfeld
02:01:24 25 did not want research and development to engage in
02:01:28 1 any activities that could be harmful to the company.
02:01:28 2 MR. WEBB: Objection.
02:01:28 3 A. Same response.
02:01:32 4 Q. The next line I'd like to draw your attention to
02:01:36 5 is a quotation attributed to you, quote, "THE
02:01:38 6 SCIENTISTS BECAME THE HANDMAIDENS TO THE LAWYERS."
02:01:44 7 That's an accurate quotation of what you said to Mr.
02:01:46 8 Kluger in 1992, is it not?
02:01:48 9 A. Same response.
02:01:50 10 Q. And that's an accurate statement of your view of
02:01:54 11 the role of scientists at Philip Morris vis-a-vis the
02:01:54 12 lawyers; correct?
02:01:56 13 MR. WEBB: Objection.
02:01:56 14 A. Same response.
02:02:18 15 Q. Direct your attention to the bottom of the third
02:02:24 16 page, under the paragraph entitled "COUNCIL FOR
02:02:32 17 TOBACCO RESEARCH," where it says "he CONCEDES THERE
02:02:34 18 WERE, quote, SPECIAL PROJECTS, close quote,
02:02:38 19 undertaken for & w/the lawyers to help them with
02:02:40 20 their efforts to defend the industry...I see nothing
02:02:44 21 sinister in all that -- just a bunch of inept guys
02:02:46 22 trying to play scientist." That's what you told Mr.
02:02:48 23 Kluger in 1992; correct?

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02:02:50 24 MR. WEBB: Where are you reading from?

02:02:52 25 A. Same response.

02:02:54 1 MR. WEBB: Where are you reading from?

02:02:54 2 MR. GORDON: Bottom of page 3, under

02:02:58 3 "COUNCIL FOR TOBACCO RESEARCH."

02:02:58 4 MR. WEBB: Right.

02:02:58 5 BY MR. GORDON:

02:03:08 6 Q. Direct your attention to the fourth page, under

02:03:16 7 "AUERBACH & HIS DOGS." "Note how the counterattack

02:03:18 8 was mounted by the lawyers & p.r. types like Holtzman

02:03:22 9 and Bowling." That's an accurate recollection of

02:03:26 10 what you told Mr. Kluger in 1992; correct?

02:03:28 11 A. Same response.

02:03:32 12 Q. And that's an accurate summary of how the

02:03:36 13 industry responded to a 1970s study by Dr. Oscar

02:03:42 14 Auerbach concerning smoking dogs; correct?

02:03:42 15 MR. WEBB: Objection.

02:03:42 16 A. Same response.

02:03:50 17 Q. And the next paragraph refers to CTR's Big Mouse

02:03:58 18 Inhalation Study, and it goes on to say, quote,

02:04:00 19 "professes no knowledge of why the study was

02:04:02 20 canceled early." Do you see that?

02:04:10 21 A. Yes.

02:04:12 22 Q. As you sit here today, do you know why the CTR's

02:04:16 23 Big Mouse Inhalation Study was canceled early?

02:04:18 24 A. Same response.

02:04:26 25 Q. Dr. Osdene, was it your practice throughout your

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02:04:30 1 tenure at Philip Morris to keep a diary of your daily
02:04:30 2 activities?
02:04:32 3 A. Same response.
02:04:48 4 Q. Philip Morris has produced to us a series of 10
02:04:52 5 documents that I'm going to mark as exhibits. In the
02:04:54 6 interest of time, I'm not going to go through them in
02:04:58 7 detail but I want to clarify a few things for the
02:04:58 8 record.
02:05:04 9 The exhibits have been -- or the documents that
02:05:06 10 I'm going to mark as exhibits have been represented
02:05:10 11 to us by Philip Morris as being your diaries, and the
02:05:16 12 earliest date of any of these documents is March 17,
02:05:20 13 1980. And my question is whether you kept diaries
02:05:26 14 prior to March 17, 1980.
02:05:28 15 A. Same response.
02:05:34 16 Q. And there is a gap of two months from November
02:05:40 17 6, 1980 to January 4, 1981 in the diaries produced by
02:05:44 18 Philip Morris. Can you explain the reason for that
02:05:46 19 gap?
02:05:46 20 A. Same response.
02:05:50 21 Q. There is also a two-and-a-half-month gap between
02:05:54 22 November 25th, 1983 and April 14, 1983. Can you
02:05:56 23 explain that gap?
02:05:56 24 A. Same response.
02:06:02 25 Q. And there is another gap of approximately three

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years and two and a half months from July 21, 1984 to October 5, 1987. What is the reason for that gap, sir?

A. Same response.

Q. Were you keeping a diary during that period of three years and two and a half months?

A. Same response.

Q. And there is a gap of two years and 10 months between December 19, 1987 and October 14, 1990. Were you keeping a diary during that period of time?

A. Same response.

Q. And the last date of the diaries produced is January 9, 1991. Did you keep a diary after January 9, 1991?

A. Same response.

Q. Do you have any reason to believe any of the diaries produced -- Strike that.

Do you have any reason to believe that any of the diaries that you kept while you were at Philip Morris have been destroyed?

A. Same response.

MR. GORDON: At this point I'm going to go through and mark the 10 different volumes that have been produced, show them to the witness for the record. This will take a few minutes. I don't know

if you want to take a real quick break while the

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court reporter marks them. It's up to you.

MR. NIELDS: I just as soon wait.

MR. GORDON: That's fine.

MR. NIELDS: Leave the room, takes too much time coming back together.

(Discussion off the stenographic record.)

(Recess taken 12:04 to 12:07 p.m.)

(Plaintiffs' Deposition Exhibits 1539 through 1548 were marked for identification.)

BY MR. GORDON:

Q. Dr. Osdene, I'm putting in front of you a stack of exhibits marked 1539 through 1548. In the interest of time, I'm not going to read the individual Bates numbers, but these are a series of 10 multipage documents that were produced by Philip Morris and represented -- represented to us as being the diaries of Thomas Osdene that Philip Morris had in its possession.

I will represent to you also that there have been a significant number of redactions to the copies produced to us on claim of attorney-client and that is a subject of a separate objection by the plaintiffs. What I'd simply like you to do is flip

through these documents so that I can ask you perhaps one or two questions about this stack of documents. Take a moment to quickly flip through them.

(Discussion off the stenographic record.)

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02:10:40 5 MR. NIELDS: Okay, he has flipped through
02:10:40 6 them.
02:10:40 7 BY MR. GORDON:
02:10:42 8 Q. Are all these documents in your handwriting,
02:10:42 9 sir?
02:10:44 10 A. Same response.
02:10:50 11 Q. And these are documents that you kept -- Strike
02:10:50 12 that.
02:10:52 13 And these are diaries of your daily activities
02:10:56 14 conducted as an employee of Philip Morris; correct?
02:10:56 15 A. Same response.
02:11:06 16 Q. So the camera has a clear view, we can shove
02:11:08 17 these aside for now.
02:11:10 18 MR. NIELDS: You [Reporter] will want to
02:11:12 19 tend to one of those exhibits. The one that is
02:11:16 20 turned sideways has a page that's torn loose.
02:12:18 21 (Discussion off the stenographic record.)
22 (Plaintiff's Deposition Exhibit 1549 was
23 marked for identification.)
02:12:52 24 BY MR. GORDON:
02:13:02 25 Q. Dr. Osdene, I'm showing you Exhibit 1549, a

02:13:04 1 single page document produced in discovery by Philip
02:13:10 2 Morris bearing Bates stamp 1000211338. The date at
02:13:12 3 the top of this letter -- of this handwritten note is
02:13:18 4 January 6, '69. This is a memo that you wrote;
5 correct?
02:13:20 6 A. Same response.

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02:13:22 7 Q. And it summarizes the conversation you had with
02:13:28 8 Max Hausermann, re the Leuchtenbergers; correct?
02:13:28 9 A. Same response.
02:13:30 10 Q. At the time you wrote this memo, Max Hausermann
02:13:34 11 was the head of research and development of Philip
02:13:36 12 Morris' subsidiary in Switzerland; correct?
02:13:38 13 A. Same response.
02:13:40 14 Q. The Leuchtenbergers were a husband and wife team
02:13:44 15 who were doing contract research for Philip Morris;
16 correct?
02:13:46 17 A. Same response.
02:13:48 18 Q. The first line on your handwritten note says,
02:13:50 19 quote, "Max was surprised and is unaware of any lung
02:13:54 20 tumors produced in mice," and that's a reference to
02:13:56 21 the fact that you had just read him a reference to
02:14:02 22 the Leuchtenbergers doing inhalation tests with mice
02:14:04 23 in producing lung tumors; correct?
02:14:04 24 A. Same response.
02:14:08 25 Q. Number 3 says, "Asked him to discretely," and

02:14:10 1 discretely is underlined, "find answers to the 2
02:14:16 2 questions," and that was your note summarizing your
02:14:20 3 direct -- your request to Mr. -- to Dr. Hausermann
02:14:22 4 that he make discrete inquiries to the
02:14:26 5 Leuchtenbergers concerning their studies finding lung
02:14:28 6 tumors in mice; correct?
02:14:28 7 A. Same response.
02:14:30 8 Q. And in fact your -- the results of your
02:14:36 9 inquiries confirm that the Leuchtenbergers

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02:14:38 10 experiments had in fact demonstrated the production
02:14:42 11 of lung tumors in mice exposed to cigarette smoke;
12 correct?
02:14:42 13 A. Same response.
02:14:44 14 MR. GORDON: Have that marked, please.
15 (Plaintiff's Deposition Exhibit 1550 was
16 marked for identification.)
02:15:06 17 BY MR. GORDON:
02:15:10 18 Q. Dr. Osdene, showing you what's been marked as
02:15:12 19 Exhibit 1550, a document produced in discovery by
02:15:20 20 Philip Morris bearing Bates stamp number 100025519AA
02:15:26 21 through 5222, a document entitled "THE COUNCIL FOR
02:15:32 22 TOBACCO RESEARCH - USA...PROGRESS REPORT V, May 25,
02:15:36 23 1972 to January 31, 1973," and it summarizes a report
02:15:40 24 by an investigator named Clayton G. Loosli, M.D.,
02:15:52 25 Ph.D. I direct your attention to the page numbered

02:15:56 1 2, and this is a report of a study conducted by Dr.
02:16:00 2 Loosli involving inhalation tests with animals
02:16:04 3 exposed to cigarette smoke; correct?
02:16:08 4 A. Same response.
02:16:12 5 Q. And this is an interim report of the study being
02:16:14 6 conducted by Dr. Loosli; correct?
02:16:14 7 A. Same response.
02:16:20 8 Q. And a small group of the animals exposed to
02:16:24 9 cigarette smoke were sacrificed after one month after
02:16:32 10 cessation of smoking and their bodies autopsied;
11 correct?

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02:16:32 12 A. Same response.
02:16:34 13 Q. And I direct your attention to the very bottom
02:16:36 14 of the last paragraph on page 2, where it says,
02:16:40 15 quote, "In the areas of macrophage collection, the
02:16:44 16 lung architecture was disrupted...suggesting that the
02:16:50 17 macrophages may be secreting proteolytic enzymes to
02:16:54 18 bring about lung changes characteristic of emphysema,
02:16:56 19 should they remain there long enough." This study
02:16:58 20 was not completed, was it?
02:16:58 21 A. Same response.
02:17:02 22 Q. In fact, it was shut down after this report came
02:17:02 23 out; correct?
02:17:04 24 A. Same response.
02:17:10 25 Q. Now I'd like to show -- well --

1 (Plaintiff's Deposition Exhibit 1551 was
2 marked for identification.)
02:17:34 3 BY MR. GORDON:
02:17:40 4 Q. Doctor, I'm now showing you Exhibit 1551, a
02:17:42 5 document produced in discovery by Philip Morris
02:17:48 6 bearing Bates stamp number 2022245105 through 5106, a
02:17:52 7 memorandum dated November 6, 1972 from R. D.
02:17:54 8 Carpenter to Dr. T. S. Osdene, and in this memorandum
02:18:00 9 Mr. Carpenter summarizes a discussion he had with a
02:18:04 10 Dr. John Whitehead of The Tobacco Research Council in
02:18:06 11 England; correct?
02:18:06 12 A. Same response.
02:18:12 13 Q. And he is discussing the TRC Council's research

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program at Harrogate; correct?

A. Same response.

Q. And the Tobacco Research Council's -- research program at Harrogate was a research program sponsored by the cigarette industry in the United Kingdom; correct?

A. Same response.

Q. Direct your attention to the second-to-the-bottom paragraph of this memo that states, "Harrogate has been doing inhalation work for several years on a more limited scale than Dontenwill. They have found only one tumor which was

termed a squamous cell carcinoma." Do you see that line?

MR. NIELDS: He is directing your attention to the second-to-the-bottom paragraph.

A. He see the line.

Q. And the Tobacco Research Council in the United Kingdom never publicly disclosed that inhalation tests it was doing with cigarette smoke had produced squamous cell carcinoma; correct?

A. Same response.

Q. And the cigarette industry in the United States never publicly disclosed that an inhalation test done by the cigarette industry in the United Kingdom at Harrogate produced a squamous cell carcinoma; correct?

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02:19:20 16 A. Same response.
02:19:22 17 Q. The next paragraph on 1551 states, "The
02:19:24 18 Harrogate laboratory has been phasing out of the
02:19:26 19 mouse skin painting and inhalation activity for the
02:19:28 20 past two years and has been converting its emphasis
02:19:32 21 to the study of more fundamental biologic activity."
02:19:36 22 In 1972 it was your understanding, was it not, that
02:19:40 23 the Tobacco Research Council and the United Kingdom
02:19:42 24 was shutting down its skin painting and inhalation
02:19:46 25 activity experiments; correct?

02:19:46 1 A. Same response.
02:19:50 2 Q. And you understood in 1972 that the reason the
02:19:52 3 industry in England was doing that was because of the
02:19:54 4 unfavorable results they were getting from their
02:19:54 5 tests; correct?
02:19:58 6 MR. WEBB: Objection.
02:19:58 7 A. Same response.
8 (Plaintiff's Deposition Exhibit 1552 was
9 marked for identification.)
02:20:30 10 BY MR. GORDON:
02:20:38 11 Q. Showing you what's been marked as Exhibit 1552,
02:20:40 12 a document produced in discovery by Philip Morris
02:20:46 13 bearing Bates stamp number 1001801280 through 283, a
02:20:50 14 memorandum dated July 17, 1974 from R. D. Carpenter
02:20:56 15 to Dr. T. S. Osdene, and this memorandum summarizes
02:21:00 16 Mr. Carpenter's visit to laboratories at Battelle
02:21:02 17 Pacific Northwest Laboratories in Richland,
02:21:06 18 Washington on July 3rd, 1974; correct?

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02:21:06 19 A. Same response.

02:21:10 20 Q. And he summarizes a discussion you had in

02:21:14 21 particular with Dr. Ray Palmer of the Battelle

02:21:16 22 Biological Division; correct?

02:21:16 23 A. Same response.

02:21:22 24 Q. He summarizes a tour of the dog inhalation

02:21:28 25 laboratory where Battelle was doing smoke inhalation

02:21:30 1 experiments with dogs; correct?

02:21:32 2 A. Same response.

02:21:34 3 Q. And Battelle was doing the smoke inhalation

02:21:36 4 experiments with dogs under the sponsorship of Philip

02:21:38 5 Morris; correct?

02:21:38 6 A. Same response.

02:21:38 7 Q. And I direct your attention to the

02:21:42 8 second-to-the-last line of the second paragraph which

02:21:44 9 states, quote, "Dr. Palmer said that they are showing

02:21:48 10 definite signs of emphysema." Do you see that?

02:21:56 11 MR. NIELDS: First page, second page.

02:21:56 12 Second paragraph, first page.

02:22:00 13 A. Yes, I see that.

02:22:02 14 Q. Did Philip Morris ever disclose that dog

02:22:04 15 inhalation tests carried out by Battelle Pacific

02:22:10 16 Northwest showed definite signs of emphysema?

02:22:10 17 A. Same response.

18 (Plaintiff's Deposition Exhibit 1553 was

19 marked for identification.)

02:22:34 20 BY MR. GORDON:

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02:22:56 Q. Dr. Osdene, I'm showing you what's been marked
02:22:58 Exhibit 1553, a document produced in discovery by
02:23:04 Philip Morris bearing Bates stamp 100030896 through
02:23:08 0898. This is a letter on the letterhead of the
02:23:10 University of Gothenburg, Department of Environmental

02:23:16 Hygiene. It's from Ragnar Rylander to Dr. Tom Osdene
02:23:18 at Philip Morris Research Center. It is dated April
02:23:22 23, 1976. And I want to direct your attention to the
02:23:26 third paragraph of this letter: Quote, "Concerning
02:23:30 the Inbifo situation, there are two things which
02:23:32 worry me at the present moment. The preparation of a
02:23:36 comprehensive conclusion document on the various
02:23:38 findings from the different inhalation experiments is
02:23:42 something which is more and more urgently needed. We
02:23:46 discussed the project during my last visit and I will
02:23:48 pursue the project when I meet with Hackenberg within
02:23:54 a few weeks." Do you see what I just read?
02:23:56 A. I see the paragraph.
02:23:58 Q. And in fact a comprehensive conclusion document
02:24:02 on the various findings from IMBIFO's inhalation
02:24:04 experiments was never prepared; correct?
02:24:06 A. Same response.

(Plaintiff's Deposition Exhibit 1554 was marked for identification.)

02:24:42 BY MR. GORDON:
02:24:46 Q. Dr. Osdene, I'm showing you what's been marked
02:24:48 as Exhibit 1554, a document produced by Philip Morris
02:24:54 in discovery bearing Bates stamp 2028871250 through

http://legacy.library.ucsf.edu/tid/wmp05a00/pdf
Source: https://www.industrydocuments.ucsf.edu/docs/pyhd0001

02:25:00 24 1253, a document entitled at the top "Report 90-day
02:25:04 25 inhalation - cigarette smoke - rats," and the fax

02:25:06 1 transmission at the top of this indicates that it
02:25:10 2 comes from the Civo Institute in TNO Zeist; correct?
02:25:14 3 MR. NIELDS: Wait a minute.
02:25:16 4 A. Same response.
02:25:18 5 Q. The Civo Institute was a biological research
02:25:22 6 laboratory in the Netherlands; correct?
02:25:24 7 A. Same response.
02:25:28 8 Q. And the Civo Institute did biological studies
02:25:32 9 including inhalation tests under contract from Philip
02:25:34 10 Morris; correct?
02:25:34 11 A. Same response.
02:25:38 12 Q. And this document that was produced by Philip
02:25:42 13 Morris, Exhibit 1554, begins on page 2. Do you know
02:25:44 14 why Philip Morris did not produce page 1?
02:25:46 15 A. Same response.
02:25:50 16 Q. I direct your attention to the first paragraph
02:25:54 17 on the first page of Exhibit 1554: Quote, "The
02:25:58 18 results of the present inhalation study indicated
02:26:00 19 that exposure of rats to cigarette smoke for 210 or
02:26:04 20 420 minutes/day, 7 days/week for a period of 90 days
02:26:10 21 caused several adverse effects. However, only the
02:26:14 22 histopathological changes observed in the respiratory
02:26:18 23 tract, the discolouration of fur and the lungs, and
02:26:22 24 the effects on hemoglobin may be solely ascribed to
02:26:24 25 the inhalation of the cigarette smoke." Do you see

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02:26:24 1 that that I just read?
02:26:26 2 MR. NIELDS: Top of page 1.
02:26:28 3 A. I see that.
02:26:28 4 Q. I want to direct your attention to the next
02:26:32 5 paragraph: Quote, "The histopathological changes
02:26:34 6 related to cigarette smoke exposure were most
02:26:38 7 pronounced in the nose and consisted of hyper- and
02:26:40 8 metaplasia of the respiratory epithelium and
02:26:44 9 degeneration of olfactory epithelium. The incidents
02:26:46 10 and severity of the hyper- and metaplasia of the
02:26:50 11 respiratory epithelium in the nose, and also the
02:26:54 12 lining epithelium in the larynx were about equally
02:26:56 13 distributed among all smoke-exposed groups; there was
02:27:00 14 even no noticeable difference between the groups
02:27:04 15 smoke-exposed for 420 minutes/day and those exposed
02:27:06 16 to smoke for 210 minute/day. Other smoke-exposed-
02:27:10 17 related histopathological changes observed in the
02:27:12 18 various segments of the respiratory tract such as
02:27:16 19 degeneration of the olfactory epithelium, the
02:27:20 20 laryngeal hyperkeratosis, and hyper- and metaplasia
02:27:20 21 of the tracheal epithelium were more pronounced in
02:27:26 22 incidence and severity in 420 minutes/day
02:27:30 23 smoke-exposed rats than in 210 minutes/day
02:27:32 24 smoke-exposed rats. The histopathological changes
02:27:36 25 seen in the lungs, characterized by intra-alveolar

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02:27:40 1 accumulation of polymorphnuclear leucocytes and brown
02:27:44 2 macrophages accompanied by an increased septal
02:27:46 3 cellularity were also more frequently found and more
02:27:50 4 pronounced in 420 minutes/day smoke-exposed rats than
02:27:56 5 in 210 minutes/day smoke-exposed rats." Do you see
02:27:56 6 what I just read, sir?
02:27:58 7 MR. NIELDS: He is referring you to the
02:28:00 8 second paragraph on page 2.
02:28:02 9 A. Yes. I see the paragraph, yes.
02:28:04 10 Q. And these findings were never publicly disclosed
02:28:06 11 by Philip Morris, were they?
02:28:06 12 A. Same response.
02:28:20 13 Q. I'll have just a moment. Sir, do you believe
02:28:22 14 smoking causes cancer, lung cancer?
02:28:24 15 A. Same response.
02:28:26 16 Q. Do you believe smoking causes emphysema?
02:28:26 17 A. Same response.
02:28:30 18 Q. Do you believe smoking causing bronchitis?
02:28:30 19 A. Same response.
02:28:34 20 Q. Do you believe smoking causes coronary artery
02:28:34 21 disease?
02:28:34 22 A. Same response.
02:28:38 23 Q. Do you believe smoking is addictive?
02:28:40 24 A. Same response.
02:28:44 25 Q. Are you aware of the destruction of any

02:28:48 1 documents relating to smoking and health by Philip

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Morris?

02:28:48 A. Same response.

02:28:54 Q. Are you aware of Philip Morris having shipped

02:28:58 any documents relating to smoking and health abroad

02:29:02 in order to avoid disclosure in litigation in the

02:29:02 United States?

02:29:04 A. Same response.

02:29:06 Q. Are you aware of Philip Morris having shipped

02:29:10 any documents abroad in order to avoid -- documents

02:29:12 related to smoking and health in order to avoid

02:29:14 disclosure in this lawsuit?

02:29:16 A. Same response.

02:29:20 Q. Are you aware of Philip Morris undertaking to

02:29:24 conduct any research abroad in order to avoid

02:29:28 disclosure of the results in litigation in the United

States?

02:29:28 A. Same response.

02:29:30 Q. Are you aware of any research conducted by

02:29:34 Philip Morris abroad in order to avoid disclosure of

02:29:36 the results of that research in this litigation?

02:29:36 A. Same response.

02:29:40 Q. Are you aware of any lawyers controlling

02:29:44 research activities in the area of smoking and health

02:29:44 by Philip Morris?

02:29:46 A. Same response.

02:29:48 Q. Are you aware of any lawyers involved in the

02:29:52 expression of any research into smoking and health by

02:29:52 Philip Morris?

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02:29:52 5 A. Same response.
02:29:56 6 Q. Are you aware of any lawyers being involved in
02:30:02 7 the termination prematurely of research into smoking
02:30:04 8 and health being conducted by Philip Morris?
02:30:06 9 A. Same response.
02:30:16 10 Q. Are you aware of any policy on the part of
02:30:20 11 Philip Morris to improperly designate documents as
02:30:24 12 attorney-client where they relate to scientific
02:30:26 13 research into smoking and health?
02:30:26 14 A. Same response.
02:30:38 15 Q. Are you aware of any conduct by the U.S.
02:30:46 16 cigarette industry as a whole of an illegal
02:30:48 17 conspiratorial nature?
02:30:48 18 A. Same response.
02:30:54 19 Q. Do you have any documents relating to smoking
02:31:00 20 and health produced during your tenure at Philip
02:31:02 21 Morris that are currently in your possession that
02:31:04 22 have not been produced in this litigation?
02:31:08 23 MR. NIELDS: That were called for?
02:31:08 24 MR. GORDON: Well, that haven't been
02:31:12 25 produced.

02:31:12 1 A. Same response.
02:31:20 2 Q. Now with your counsel's addition, does that
02:31:20 3 change the answer?
02:31:24 4 MR. NIELDS: You can answer that question.
02:31:28 5 In other words, if I'm understanding the question,
02:31:30 6 has he produced all documents he understands he is

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02:31:32 7 required to produce in this lawsuit.
02:31:34 8 THE WITNESS: Is that the question?
02:31:36 9 MR. GORDON: Yeah. I guess I don't
02:31:40 10 understand because we haven't -- we did not serve a
02:31:42 11 subpoena duces tecum.
02:31:44 12 MR. NIELDS: I apologize. I stand
02:31:48 13 corrected, I stand corrected, and he can't -- if you
02:31:52 14 had, he would answer that question yes or no but
02:31:54 15 since you haven't he can't, and --
02:31:58 16 Q. Did Philip Morris ask you to turn over to Philip
02:32:00 17 Morris or its attorneys all documents you had in your
02:32:02 18 possession related to smoking and health?
02:32:04 19 A. Same response.
02:32:04 20 Q. Did you do so?
02:32:04 21 A. Same response.
02:32:16 22 Q. Are you aware of any senior executives of Philip
02:32:20 23 Morris that have committed perjury before the United
02:32:20 24 States Congress?
02:32:20 25 A. Same response.

02:32:24 1 Q. Are you aware of any Philip Morris executives
02:32:26 2 that have committed perjury in any other legal
02:32:28 3 proceedings where they were under oath?
02:32:28 4 A. Same response.
02:32:32 5 Q. Are you aware of any senior executives of any of
02:32:34 6 the other cigarette -- U.S. cigarette manufacturers
02:32:36 7 who committed perjury before the United States
02:32:36 8 Congress?
02:32:38 9 A. Same response.

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02:32:40 10 Q. Are you aware of any other senior executives of
02:32:44 11 the other cigarette manufacturers in the United
02:32:46 12 States who have committed perjury under oath in any
02:32:48 13 other legal proceedings?
02:32:48 14 A. Same response.
02:32:56 15 Q. PM -- Strike that.
02:33:00 16 Philip Morris was aware at least as far back as
02:33:06 17 1964 that smoking caused lung cancer; correct?
02:33:08 18 MR. WEBB: Objection.
02:33:08 19 A. Same response.
02:33:14 20 Q. And Philip Morris publicly took the position
02:33:20 21 that there was still a question as to whether
02:33:22 22 cigarette smoking caused lung cancer; correct?
02:33:22 23 A. Same response.
02:33:28 24 Q. And the reason Philip Morris took that public
02:33:32 25 position, despite the fact it knew internally that

02:33:34 1 was a false position, was in order to give cigarette
02:33:38 2 smokers a rationalization for continuing to smoke;
3 correct?
02:33:40 4 MR. WEBB: Objection.
02:33:40 5 A. Same response.
02:33:46 6 Q. Indeed that has been the whole focal point of
02:33:52 7 the cigarette industry's research activities from a
02:33:56 8 public standpoint since the mid-1960s; that is, to
02:34:00 9 provide cigarette smokers with a rationalization for
02:34:02 10 continuing smoking in the face of allegations of
02:34:06 11 harmful effects of smoking?

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02:34:06 MR. WEBB: Objection.

02:34:06 A. Same response.

02:34:10 MR. NIELDS: Are we about there?

02:34:10 MR. GORDON: Almost.

02:34:20 MR. GORDON: Yeah. Thanks. I have nothing

02:34:22 further.

02:34:24 MR. WEBB: Let's take five minutes and I'll

02:34:26 get set up over here.

02:34:30 THE REPORTER: Off the record.

02:34:30 (Recess taken from 12:36 and 12:44 p.m.)

02:34:48 MR. WEBB: We are back on the record?

02:34:50 THE REPORTER: We are.

EXAMINATION

02:34:50 BY MR. WEBB:

02:34:54 Q. Dr. Osdene, my name is Dan Webb and I'd like to

02:34:58 ask you a few questions on behalf of Philip Morris.

02:35:02 Doctor, is it fair to say that you became aware

02:35:06 that federal prosecutors were conducting a grand jury

02:35:08 investigation that was looking at the conduct of

02:35:12 certain tobacco companies quite some time ago? Is

that correct?

02:35:18 MR. GORDON: Object to form.

02:35:20 A. Yes.

02:35:22 Q. And as result of your knowledge of that grand

02:35:26 jury investigation, did you retain a personal

02:35:30 attorney who you believe was quite knowledgeable

02:35:34 about grand jury investigations? Is that correct?

02:35:36 MR. NIELDS: You can answer that question.

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02:35:44 (Witness and counsel confer off the record.)

02:35:48 A. On advice of counsel, I respectfully decline to answer based on my fifth amendment privilege against self-incrimination because there is an ongoing parallel criminal investigation.

02:36:04 Q. Dr. Osdene, is it true that you believe that tobacco companies had become politically unpopular in this country in recent times? Is that correct?

02:36:12 MR. GORDON: Object to form.

02:36:12 A. Same response.

02:36:16 Q. And is it your belief that because of that political unpopularity, is it true that both you and your lawyer are concerned that federal prosecutors and the grand jury could rush to judgment and charge certain tobacco executives like yourself with wrongdoing that actually did not take place?

02:36:38 MR. GORDON: Object to form. In addition, I object on the grounds it invades the attorney-client privilege and if counsel permits this witness to answer, we will constitute that as a waiver of attorney-client and will resume the line of questioning that we abandoned earlier.

02:36:52 MR. NIELDS: Sorry, I've got to hear the question again.

02:37:00 Q. Is the true, Dr. Osdene, that you believe

02:37:04 because of the political unpopularity of tobacco

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02:37:06 17 companies that you are concerned that federal
02:37:10 18 prosecutors and the grand jury could rush to judgment
02:37:12 19 and charge tobacco executives like yourself with
02:37:14 20 wrongdoing that actually did not take place?
02:37:18 21 A. Same response.
02:37:22 22 MR. GORDON: Please note a form objection
02:37:22 23 to that as well.
02:37:26 24 MR. WEBB: Just because I'm different, when
02:37:28 25 we say "same response" that means the witness is

02:37:30 1 invoking the fifth amendment privilege; is that
02:37:32 2 correct, Mr. Nields.
02:37:32 3 MR. NIELDS: That's correct, and precisely
02:37:36 4 the language he did the first time he did not respond
02:37:36 5 to your question.
02:37:38 6 MR. WEBB: I accept that.
02:37:38 7 BY MR. WEBB:
02:37:42 8 Q. Dr. Osdene, is it because of that concern that
02:37:48 9 you have that your lawyer, who is an expert on grand
02:37:50 10 jury investigations, has advised you that you should
02:37:54 11 error on the side of caution and you should refuse to
02:37:56 12 answer any questions about matters you were involved
02:37:58 13 with at Philip Morris?
02:38:00 14 MR. NIELDS: I'm going to direct him not to
02:38:02 15 answer that on attorney-client privilege grounds.
02:38:06 16 BY MR. WEBB:
02:38:08 17 Q. Now, have you decided you should follow the
02:38:12 18 advice of your attorney and that you should refuse to
02:38:18 19 answer any questions relating to a variety of subject

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02:38:20 20 matters relating to duties you performed while at
02:38:20 21 Philip Morris?
02:38:24 22 MR. GORDON: Form objection.
02:38:26 23 MR. NIELDS: You can answer that question
02:38:30 24 aside from the part about advice of -- of counsel.
02:38:34 25 MR. GORDON: I don't know how -- how you

02:38:36 1 are separating -- separating that out. Can I have --
02:38:38 2 Can I hear the question back?
02:38:38 3 (Record read.)
02:38:56 4 MR. GORDON: I object to form, I also
02:38:58 5 object on the grounds of attorney-client privilege
02:39:00 6 with respect to that part about following his
02:39:02 7 advice. But I understand, counsel, you are
02:39:04 8 instructing him not to answer that portion?
02:39:10 9 MR. NIELDS: Yes, I'm -- I'm directing --
02:39:12 10 I'm objecting on attorney-client privilege grounds,
02:39:16 11 directing him not to respond with regard to anything
02:39:18 12 that he has learned from his counsel. With that,
02:39:24 13 with that understanding --
02:39:26 14 A. Same response.
02:39:28 15 Q. Let me rephrase -- let me phrase the question
02:39:28 16 this way.
02:39:30 17 Dr. Osdene, have you made the decision that you
02:39:34 18 are going to error on the side of caution and refuse
02:39:36 19 to answer virtually any question about matters that
02:39:40 20 you worked on while you were at Philip Morris?
02:39:40 21 A. Same response.

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02:39:48 22 Q. In fact, Dr. Osdene, have you invoked the fifth
02:39:52 23 amendment privilege and refused to answer questions
02:39:58 24 about subject matters that you knew your answers
02:40:00 25 could be very favorable to Philip Morris?

02:40:02 1 MR. GORDON: Objection to form, leading.
02:40:04 2 A. Same response.
02:40:10 3 Q. And have you refused to answer questions because
02:40:14 4 you are so concerned -- strike the question.
02:40:16 5 Is it because you are so concerned about the
02:40:20 6 possibility of prosecutors charging a tobacco
02:40:24 7 executive unfairly with a crime that has led you to
02:40:26 8 invoke the fifth amendment privilege as to subject
02:40:30 9 matters which on their face do not appear to have any
02:40:32 10 realistic chance of incriminating you?
02:40:34 11 MR. GORDON: Object to form. It's leading,
02:40:36 12 assumes facts not in evidence, invades the province
02:40:40 13 of court and exceeds the scope of permissible inquiry
02:40:42 14 of a witness who has chosen to invoke the fifth
02:40:42 15 amendment.
02:40:44 16 A. Same response.
02:40:54 17 Q. For example, Dr. Osdene, you invoked the fifth
02:40:56 18 amendment privilege about an hour ago on the question
02:41:00 19 of whether you smoke cigarettes. Do you recall that?
02:41:02 20 A. Same response.
02:41:06 21 Q. Is the reason that you invoked the fifth
02:41:10 22 amendment on that simple question is because you have
02:41:14 23 decided to error on the side of caution and invoke
02:41:16 24 the fifth amendment as to literally anything that

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02:41:18 25 relates to cigarettes?

02:41:20 1 MR. GORDON: Same objections.
02:41:20 2 A. Same response.
02:41:26 3 Q. Doctor, earlier today, about an hour ago, you
02:41:28 4 invoked the fifth amendment as to whether a gentleman
02:41:32 5 by the name of Richard Kluger wrote a book called
02:41:36 6 Ashes to Ashes. Is the reason you invoked the fifth
02:41:40 7 amendment as to that question is because you are
02:41:42 8 going to error on the side of caution and invoke the
02:41:46 9 fifth amendment on anything that has anything to do
02:41:46 10 with cigarettes?
02:41:48 11 MR. GORDON: Same objection.
02:41:48 12 A. Same response.
02:41:52 13 Q. Dr. Osdene, you earlier this morning invoked the
02:41:58 14 fifth amendment in connection with acknowledging --
02:41:58 15 strike the question.
02:42:02 16 Dr. Osdene, you invoked the fifth amendment this
02:42:06 17 morning as to whether or not Mr. Cullman was the CEO
02:42:10 18 of Philip Morris. Did you invoke the fifth amendment
02:42:14 19 on identifying him as the CEO of Philip Morris to
02:42:16 20 error on the side of caution?
02:42:16 21 MR. GORDON: Same objections.
02:42:18 22 A. Same response.
02:42:26 23 Q. Dr. Osdene, you invoked the fifth amendment
02:42:28 24 today on the issue of whether you actually had
02:42:30 25 maintained a diary at Philip Morris. Is that an

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02:42:34 example of you invoking the fifth amendment privilege
02:42:36 as to virtually anything that you did while at Philip
Morris?
02:42:38 MR. GORDON: Same objections.
02:42:40 A. Same response.
02:42:46 Q. Let me ask you this, Dr. Osdene. Did Philip
02:42:48 Morris manufacture cigarettes while you were employed
02:42:48 at Philip Morris?
02:42:50 A. Same response.
02:42:52 Q. Did Philip Morris manufacture the Marlboro brand
02:42:54 of cigarettes while you were employed at Philip
Morris?
02:42:56 A. Same response.
02:42:58 Q. Dr. Osdene, did the position that you have been
02:43:02 put in here today to invoke the fifth amendment on
02:43:04 virtually everything, did that cause you during the
02:43:10 course of Mr. Gordon's deposition to invoke the fifth
02:43:16 amendment even though you knew that you had no
02:43:18 knowledge that would allow you to answer the
02:43:20 question?
02:43:20 MR. GORDON: Same objections.
02:43:22 A. Same response.
02:43:50 Q. Dr. Osdene, just to pick up on an example, just
02:43:52 right toward the end of your examination, I'm going
02:43:54 to hand you an exhibit that was marked as exhibit

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02:44:00 1 1554. Mr. Nields, if you don't have that in front of
02:44:00 2 you, I'll show you another.
02:44:04 3 Exhibit 1554 was shown to you a few minutes ago
02:44:06 4 by Mr. Gordon. I'll ask you to look at that exhibit
02:44:10 5 at this time. At the time Mr. Gordon showed you that
02:44:12 6 exhibit a few minutes ago, he asked you whether or
02:44:16 7 not -- he asked you why Philip Morris did not produce
02:44:18 8 page 1 of that exhibit and you invoked the fifth
02:44:22 9 amendment to that question. And, Dr. Osdene, is it
02:44:26 10 correct that you couldn't possibly know one way or
02:44:28 11 the other as to why Philip Morris did not produce
02:44:30 12 page 1 of that exhibit? Is that correct?
02:44:32 13 MR. GORDON: Same objections.
02:44:34 14 A. Same response.
02:44:44 15 Q. Thank you. For example, Mr. Gordon asked you a
02:44:46 16 question towards the end of his examination this
02:44:52 17 morning as to whether -- he asked you a question as
02:44:54 18 to whether you were aware if Philip Morris shipped
02:45:00 19 documents overseas to avoid production of documents
02:45:04 20 to -- to the Minnesota plaintiffs in the Minnesota
02:45:08 21 case. Doctor, could you possibly have had any
02:45:10 22 knowledge about that whatsoever?
02:45:12 23 MR. GORDON: Same objections.
02:45:12 24 A. Same response.
02:45:16 25 Q. And, Doctor, even though you had every reason to

02:45:20 1 believe that that has never happened, you still would
02:45:22 2 have invoke the fifth amendment; is that correct?

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02:45:24 3 MR. GORDON: Same objections.
02:45:24 4 A. Same response.
02:45:32 5 Q. Dr. Osdene, is not correct -- strike the
02:45:32 6 question.
02:45:34 7 Dr. Osdene, is it true that during the entire
02:45:38 8 time of your employment at Philip Morris that you
02:45:42 9 never violated the law in carrying out your duties?
02:45:42 10 MR. GORDON: Same objections.
02:45:44 11 A. Same response.
02:45:46 12 Q. Is it also true that you are not aware of any
02:45:48 13 other Philip Morris employees who ever violated the
02:45:50 14 law during the time you were employed there?
02:45:52 15 MR. GORDON: Same objections.
02:45:52 16 A. Same response.
02:46:10 17 Q. Dr. Osdene, is it correct that you believe that
02:46:14 18 you have the right to wait for this grand jury
02:46:16 19 investigation to end before you should have to answer
02:46:20 20 the type of questions that Mr. Gordon phrased to you
02:46:20 21 during the course of this deposition?
02:46:24 22 MR. GORDON: Same objections.
02:46:24 23 A. Same response.
02:46:48 24 Q. Dr. Osdene, is it correct that during the past
02:46:50 25 two days of questioning by Mr. Gordon, as you

02:46:54 1 listened to many of his questions, there are times
02:46:58 2 that you became aware that his questions contained
02:47:00 3 facts and accusations that you knew to be incorrect
02:47:02 4 if not false?
02:47:06 5 MR. GORDON: Same objections.

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02:47:08 6 A. Same response.
02:47:10 7 Q. But, Dr. Osdene, you could not answer Mr.
02:47:14 8 Gordon's question by telling him that the facts and
02:47:18 9 accusations were false but instead you had to invoke
02:47:18 10 your fifth amendment; is that correct?
02:47:22 11 MR. GORDON: Same objections.
02:47:24 12 A. Same response.
02:48:00 13 Q. Dr. Osdene, is it correct that in response to
02:48:02 14 many of Mr. Gordon's questions that he has asked you
02:48:06 15 during the past two days, that as you listened to his
02:48:10 16 questions you knew that if you answered those
02:48:12 17 questions honestly that those answers will be quite
02:48:14 18 favorable to Philip Morris and the other tobacco
02:48:16 19 companies? Is that correct?
02:48:18 20 MR. GORDON: Same objections.
02:48:18 21 A. Same response.
02:48:22 22 Q. In fact, is the true, Dr. Osdene, if the
02:48:24 23 government was not conducting this grand jury
02:48:28 24 investigation, you would have answered each and every
02:48:30 25 one of Mr. Gordon's questions in a truthful and

02:48:32 1 honest fashion and you would not have invoked the
02:48:34 2 fifth amendment? Is that correct?
02:48:36 3 MR. GORDON: Same objection.
02:48:36 4 A. Same response.
02:48:40 5 Q. And you are also aware those truthful answers,
02:48:42 6 if you were allowed to give them, would reflect that
02:48:44 7 neither you or anyone else at Philip Morris ever

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engaged in any illegal conduct; is that correct?

MR. GORDON: Same objection.

A. Same response.

Q. Is it true, Dr. Osdene, if this grand jury investigation were to end next week or next month or at some point in time in the reasonable future that you would come back to this deposition, you would face Mr. Gordon and you would answer any and all of his questions in a complete and truthful fashion? Is that correct?

MR. GORDON: Same objection.

A. Same response.

Q. Would it be fair to say you are looking forward to the day that that could happen?

MR. GORDON: Same objections.

A. Same response.

Q. Doctor, is it not true you are being denied the opportunity to give favorable testimony because you

feel compelled to invoke the fifth amendment to these questions?

MR. GORDON: Same objections.

A. Same response.

Q. Yesterday, Mr. Gordon asked you yesterday if Dr. Robert Seligman --

MR. WEBB: How is it pronounced.

MR. NUNLEY: Seligman.

Q. -- Seligman was involved in criminal conduct. Is it true, Dr. Osdene, you knew he had not been

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02:49:58 11 involved in any criminal misconduct but you could not
02:50:00 12 say that and had to invoke the fifth amendment? Is
13 that correct?
02:50:02 14 MR. GORDON: Same objections.
02:50:02 15 A. Same response.
02:50:10 16 Q. And yesterday Mr. Gordon asked you if Dr.
02:50:12 17 William Dunn was involved in criminal misconduct
02:50:16 18 while you were at Philip Morris. Is it not true, Dr.
02:50:20 19 Osdene, that you knew that Dr. Dunn had not been
02:50:22 20 involved in any criminal misconduct but you could not
02:50:24 21 say that. Instead, you had to invoke the fifth
02:50:26 22 amendment in response to that question?
02:50:28 23 MR. GORDON: Same objection.
02:50:30 24 A. Same response.
02:50:36 25 Q. Yesterday, Mr. Gordon asked you a series of

02:50:38 1 questions about Philip Morris marketing cigarettes to
02:50:42 2 youth which you knew was not true but you could not
02:50:46 3 say that and you still invoked your fifth amendment
02:50:48 4 and did not answer the question; is that correct?
02:50:50 5 MR. GORDON: Same objections.
02:50:52 6 A. Same response.
02:50:58 7 Q. And I noticed yesterday Mr. Gordon asked you
02:51:00 8 questions regarding the similarity between cocaine
02:51:04 9 and morphine on the one hand compared to nicotine on
02:51:08 10 the other hand and you knew that there was no
02:51:12 11 similarity or comparability but you could not say
02:51:14 12 that and instead you invoked your fifth amendment; is

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that correct?

02:51:16 MR. GORDON: Same objections.

02:51:16 A. Same response.

02:51:30 Q. Now, Dr. Osdene, is it true that Philip Morris has had nothing to do with your decision to invoke the fifth amendment in this deposition?

02:51:38 MR. GORDON: Same objections.

02:51:38 A. Same response.

02:51:44 Q. Is it correct, Dr. Osdene, that that was a decision -- strike the question.

02:51:48 Is it true, Dr. Osdene, that the decision to invoke the fifth amendment to the questions asked of you by Mr. Gordon was a decision made exclusively by

02:51:58 you and your lawyer and that Philip Morris had absolutely nothing to do with that decision?

02:52:02 MR. GORDON: Same objections.

02:52:02 A. Same response.

02:52:10 Q. Dr. Osdene, is it true when Philip Morris learned that it was your intention to invoke the fifth amendment in answering questions in a deposition that Philip Morris did everything humanly possible --

02:52:22 MR. GORDON: Same objections, also lack of foundation.

02:52:26 MR. WEBB: Let me finish the question.

02:52:26 MR. GORDON: Sorry.

02:52:28 MR. WEBB: I'll repeat the question.

02:52:28 BY MR. WEBB:

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02:52:30 16 Q. Dr. Osdene, is it true when Philip Morris
02:52:34 17 learned that it was your intention to invoke the
02:52:36 18 fifth amendment in answering questions in a
02:52:40 19 deposition that Philip Morris did everything humanly
02:52:42 20 possible to convince you and your attorney to
02:52:48 21 reconsider that decision and to answer all questions
02:52:50 22 in a complete and truthful fashion; is that correct?
02:52:52 23 MR. GORDON: Same objections and lack of
02:52:52 24 foundation.
02:52:54 25 A. Same response.

02:52:58 1 Q. In fact, you were aware that Philip Morris wrote
02:53:02 2 a letter to your attorney setting forth in detail how
02:53:06 3 strongly Philip Morris felt about you testifying
02:53:10 4 completely and truthfully and not invoking your fifth
02:53:12 5 amendment privilege in a deposition; is that
6 correct?
02:53:16 7 MR. GORDON: Same objections.
02:53:16 8 A. Same response.
02:53:24 9 MR. WEBB: Let me mark an exhibit. Let me
02:53:26 10 state on the record yesterday Mr. Gordon made a
02:53:34 11 request for us to produce to him copies of all
02:53:38 12 communications between Mr. Nathan and the law firm of
02:53:40 13 Arnold & Porter who represented Philip Morris in
02:53:44 14 connection with the issue of Dr. Osdene invoking his
02:53:50 15 fifth amendment, communication with Mr. Nields, who
02:53:52 16 was counsel to Dr. Osdene.
02:53:54 17 Overnight, counsel, I have put together the

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02:54:02 18 correspondence that I believe exists that complies
02:54:04 19 with your request and I will tender it to you at this
02:54:08 20 time. And apparently Mr. Nunley has already given it
02:54:18 21 to you. And I'm going to mark as an exhibit --
02:54:18 22 MR. GORDON: Counsel, I want to correct
02:54:22 23 your statement for the record. I did not simply ask
02:54:24 24 for the correspondence between Mr. Nathan and Dr.
02:54:28 25 Osdene's counsel with respect to his invoking the

02:54:30 1 fifth. What I asked for, and I will quote from what
02:54:34 2 I requested on the record, is, and what I told
02:54:36 3 counsel on Sunday night when he called me in my hotel
02:54:38 4 room, that if they were going to be producing these
02:54:42 5 two letters, plaintiffs requested production of all
02:54:46 6 correspondence between Philip Morris or anyone acting
02:54:50 7 on behalf of Philip Morris including lawyers and Dr.
02:54:54 8 Osdene or anyone acting on behalf of Dr. Osdene and
02:54:56 9 his counsel. In particular, I want to make it clear
02:55:00 10 plaintiffs are requesting all correspondence between
02:55:04 11 Arnold & Porter and Howrey & Simon and we would
02:55:06 12 object to selective use of only these two letters.
02:55:08 13 If you are representing to me, sir, that the
02:55:12 14 letters, the handful of letters that have been
02:55:14 15 produced starting with an April 23rd letter from
02:55:18 16 Nathan to Nields concluding with a May 7th letter
02:55:22 17 from Nields to Nathan comprise the sum total of
02:55:24 18 communications between Philip Morris or Dr. Osdene
02:55:28 19 and his counsel, I will not object on that basis;
02:55:30 20 however, it seems from your recitation of what we

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requested that you severely and narrowly restricted the production to communication between Mr. Nathan and Mr. Nields and only on the issue of Osdene's asserting the fifth amendment, and I want to make it abundantly clear from the record we object to the

selective production, we object to the untimeliness of the predesignation and we note -- we take the position that using anything in connection with your communications between Philip Morris and Mr. -- Dr. Osdene constitutes a subject-matter waiver that will entitle us to conduct further discovery including depositions of Mr. Nathan and anyone else acting on behalf of Philip Morris who communicated with Dr. Osdene or his counsel.

MR. WEBB: I'll state on the record that what I produced to you are all -- all the communications that I'm aware of between the law firm of Arnold & Porter and Mr. Nields on the subject matter of Dr. Osdene invoking the fifth amendment. I've done that because there is no subject-matter waiver because there is no privilege that attaches in the first place.

Is there never was -- there was no -- there was no joint defense agreement between Mr. Nathan and any counsel for Dr. Osdene, and so there is no privilege that could ever have attached to those communications. And you are entitled to those and

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02:56:50 23 you requested them and I've given them to you so that
02:56:52 24 you would not -- in any way could not believe or
02:56:56 25 think that we were selectively only using certain

02:56:56 1 documents.
02:56:58 2 You now have the sum total of all communications
02:57:02 3 on this subject matter and there is no issue of
02:57:04 4 subject-matter waiver because there never was a
02:57:06 5 privilege that attached in the first place.
02:57:10 6 It may very well be that Mr. Nields -- I'll
02:57:12 7 state on the record it's my understanding that Mr.
02:57:14 8 Nields, for example, has had communications with
02:57:20 9 lawyers at Davis Polk in connection with the grand
02:57:22 10 jury investigation which I know nothing about, but I
02:57:26 11 certainly have not made any effort to search for
02:57:28 12 documents relating to that because there may very
02:57:30 13 well be a privilege that attaches to that and I've
02:57:32 14 made no effort to search for those documents.
02:57:34 15 What I have done, though, is made an effort
02:57:36 16 overnight to search for any and all written
02:57:40 17 communications that relate to the subject matter of
02:57:44 18 communications between Arnold & Porter and Mr. Nields
02:57:46 19 on the subject matter of Dr. Osdene invoking the
02:57:48 20 fifth amendment because that's the subject matter of
02:57:52 21 the documents that I'm about to show -- to show Dr.
02:57:52 22 Osdene.
02:57:54 23 MR. GORDON: And I think we made our
02:57:56 24 position abundantly clear and your selective decision
02:57:58 25 to only produce what you claim are the documents

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relating to this particular limited subject matter is not acceptable. We insist that all communication, all documents be produced. If you claim a privilege, there is a procedure in the Case Management Order for -- for including them on a privilege log and we expect that that procedure will be followed. We expect our request will be honored and we object to the use of selective -- selected self-serving portions of the documents.

MR. WEBB: Ask you to mark this as Defense Exhibit 1201.

(Plaintiff's Deposition Exhibit 1201 was marked for identification.)

BY MR. WEBB:

Q. Dr. Osdene, I'm going to hand you an exhibit marked Defendants' Exhibit 1201, ask you to examine this document.

If you just look at the face of the document itself, Dr. Osdene, on the face of the document, does it reflect that it is a letter from the law firm of Arnold & Porter? On the second page you will see signed by a person by the name of Irvin Nathan; that is, the letter on its face reflects it is addressed to John W. Nields, Jr. at his Washington address. Is that correct?

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02:59:30 1 MR. GORDON: Objections as previously
02:59:32 2 stated.
02:59:32 3 A. Same response.
02:59:38 4 Q. Dr. Osdene, if you would look at this letter,
02:59:42 5 I'm now going to read to you the first paragraph of
02:59:48 6 this letter. After the salutation, "Dear Mr.
02:59:52 7 Nields," the letter reads, "I understand from our
02:59:56 8 recent discussions that your client, Dr. Thomas
03:00:00 9 Osdene, is considering invoking his Fifth Amendment
03:00:02 10 privilege against self-incrimination at his
03:00:06 11 deposition in the civil case brought by the state of
03:00:10 12 Texas scheduled for mid-May. As you know from our
03:00:14 13 telephone conversations, my client, Philip Morris,
03:00:18 14 requests that Dr. Osdene testify fully and truthfully
03:00:24 15 at his deposition and that he not invoke his fifth
03:00:26 16 amendment rights. I write to explain the reasons
03:00:30 17 underlying Philip Morris' position."
03:00:32 18 My first question to you, Dr. Osdene, do you see
03:00:36 19 the words written on this piece of paper marked as
03:00:38 20 Exhibit 1201?
03:00:40 21 MR. NIELDS: He is drawing your attention
03:00:40 22 to the first paragraph.
03:00:42 23 A. Yes, I see them.
03:00:44 24 MR. GORDON: Please note my continuing
03:00:46 25 objections to the use of this document. I don't,

03:00:48 1 however, object to the form of that question.

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03:00:50 2 BY MR. WEBB:
03:00:52 3 Q. Dr. Osdene, just as set forth in that letter,
03:00:58 4 which is dated April 23rd, 1987, is it correct that
03:01:02 5 you were very much aware that Philip Morris wanted
03:01:06 6 you to testify fully and truthfully at that
03:01:08 7 deposition and Philip Morris did not want you to
03:01:12 8 invoke your fifth amendment rights?
03:01:12 9 MR. GORDON: Objection.
03:01:14 10 A. Same response.
03:01:16 11 MR. GORDON: Let me just state objection to
03:01:20 12 form, leading, assumes facts not in evidence, and
03:01:24 13 objections based on the use of this particular
03:01:26 14 document as previously stated.
03:01:30 15 MR. WEBB: Did he answer the question?
03:01:32 16 MR. NIELDS: Yes. He said "same
03:01:32 17 response."
03:01:34 18 BY MR. WEBB:
03:01:38 19 Q. Now, Dr. Osdene, look at the third paragraph on
03:01:40 20 the first page. You might just look at it. Mr.
03:01:44 21 Nathan, in communicating with your lawyer on April
03:01:48 22 23rd, went on to state in the third paragraph of the
03:01:50 23 letter, "Dr. Osdene's invocation of the Fifth
03:01:52 24 Amendment would be inconsistent with the Philip
03:01:56 25 Morris' desires that the truth be fully presented.

03:02:00 1 The prospect of a former Philip Morris employee
03:02:04 2 invoking the Fifth Amendment at a deposition would be
03:02:08 3 unfortunate and contrary to that company policy.

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While all of the ramifications of such an occurrence difficult to predict, one can well imagine the damaging effect on Philip Morris' business and the sensational and unfair press coverage with speculations as to what information the witness is hiding." Do you see the words written on paragraph 3 that I just read to you?

MR. WEBB: Same objection.

MR. NIELDS: He is calling your attention to the third paragraph?

A. Yes, I see them

BY MR. WEBB:

Q. Is it fair to say, Dr. Osdene, you were very much aware that Philip Morris believed that it would be unfortunate and contrary to the policy of Philip Morris for you to invoke the fifth amendment in a deposition?

MR. GORDON: Same objection in addition to foundation.

A. Same response.

MR. WEBB: Did he answer the question?

MR. NIELDS: He said "same response."

MR. WEBB: Thank you.

MR. GORDON: Dr. Osdene, if I could just have a second to interpose objections before you respond, please.

THE WITNESS: Sure.

BY MR. WEBB:

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03:03:08 7 Q. Look at the second page of the letter, Dr.
03:03:10 8 Osdene. Again I'm reading from the same letter dated
03:03:14 9 April 23rd, 1997. Do you see the second paragraph on
03:03:18 10 page 2? And I'll now read it.
03:03:20 11 "In sum, Philip Morris is convinced that a full
03:03:24 12 and truthful airing of all of the facts will lead to
03:03:28 13 its vindication. Anything less, however, could lead
03:03:34 14 to a -- to a great miscarriage of justice." Do you
03:03:36 15 see the words that are set forth in that paragraph?
03:03:38 16 MR. NIELDS: He is calling your attention
03:03:40 17 to the second-to-the-last paragraph on page 2.
03:03:40 18 A. I see the words.
03:03:44 19 Q. Would it be fair to say, Dr. Osdene, you
03:03:46 20 yourself were personally very much aware that Philip
03:03:48 21 Morris was convinced that if you would not invoke the
03:03:52 22 fifth amendment but if you would answer all questions
03:03:56 23 honestly and truthfully, that that would be the way
03:03:58 24 to allow all facts to be made of record and would
03:04:00 25 lead to Philip Morris' vindication?

03:04:02 1 MR. GORDON: Same objection.
03:04:04 2 A. Same response.
03:04:06 3 Q. I want to direct your attention to the last
03:04:08 4 paragraph of the letter. Philip Morris went on to
03:04:12 5 tell your lawyer, "I ask that you share the contents
03:04:16 6 of this letter with Dr. Osdene and explain to him the
03:04:20 7 depth, strength and sincerity of Philip Morris'
03:04:22 8 concerns about this matter. It is of the utmost

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03:04:26 9 importance that Dr. Osdene understand that his full
03:04:30 10 and truthful testimony is vital to Philip Morris and
03:04:32 11 that his invocation of the fifth amendment could be
03:04:36 12 used unfairly to inflict great harm on the company."
03:04:38 13 Do you see the words set forth in that paragraph I
03:04:40 14 just regard to you?
03:04:40 15 MR. NIELDS: He is calling your
16 attention --
17 A. I see the words.
03:04:42 18 MR. NIELDS: -- to the last paragraph.
03:04:44 19 A. I see the words.
03:04:46 20 Q. Dr. Osdene, would it be fair to say you were
03:04:48 21 very much aware that Philip Morris believed that your
03:04:52 22 truthful testimony was vital to Philip Morris and
03:04:54 23 that if you took the fifth amendment that it would be
03:04:58 24 -- could be very unfair to Philip Morris and inflict
03:04:58 25 great harm on Philip Morris?

03:05:00 1 MR. GORDON: Same objections.
03:05:02 2 A. Same response.
03:05:22 3 Q. Dr. Osdene, is it fair to say that in spite of
03:05:24 4 the concerns that Philip Morris had about you
03:05:26 5 invoking the fifth amendment, that after that letter
03:05:32 6 was received that you and your lawyer still made the
03:05:34 7 final decision that you were going to invoke the
03:05:36 8 fifth amendment regardless of what Philip Morris
03:05:40 9 wanted?
03:05:42 10 MR. NIELDS: Object insofar as it inquires
03:05:46 11 into the attorney-client communications. If he can

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03:05:46 12 answer --

03:05:48 13 MR. WEBB: I'll strike the question. . Let

03:05:50 14 me try to simplify it.

03:05:50 15 BY MR. WEBB:

03:05:52 16 Q. Is it true after that letter was received that

03:05:54 17 you, Dr. Osdene, made the decision, the final

03:05:56 18 decision that you were going to invoke the fifth

03:05:58 19 amendment in the Texas deposition and now have made

03:06:02 20 the decision to invoke the fifth amendment in this

03:06:04 21 Minnesota deposition regardless of what Philip Morris

03:06:06 22 wants?

03:06:08 23 MR. GORDON: Same objection. In addition,

03:06:12 24 I want to object to counsel making reference to Texas

03:06:14 25 deposition when counsel specifically advised me that

03:06:16 1 Philip Morris took the position that the sealing

03:06:20 2 order precluded any mention of the Texas deposition

03:06:22 3 in this proceeding and I would move to strike any

03:06:26 4 reference to the Texas deposition.

03:06:26 5 A. Same response.

03:06:34 6 Q. Dr. Osdene, are you aware that once Philip

03:06:36 7 Morris found out that you had made the final decision

03:06:38 8 and were going to invoke the fifth amendment in a

03:06:42 9 deposition that Philip Morris believed that your

03:06:46 10 decision to invoke the fifth amendment was

03:06:50 11 inconsistent with an employment severance agreement

03:06:52 12 that you had with Philip Morris dated in May of

03:06:54 13 1992?

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03:06:56 14 MR. GORDON: Same objections.
03:06:56 15 A. Same response.
03:07:02 16 Q. Did you -- Strike the question.
03:07:04 17 Is it true, Dr. Osdene, that you became aware
03:07:08 18 that Philip Morris' position was that because of this
03:07:12 19 severance agreement that you had no right to take the
03:07:14 20 fifth amendment in a deposition? Did you become
03:07:16 21 aware that was Philip Morris' position?
03:07:20 22 MR. GORDON: Same objections.
03:07:20 23 A. Same response.
03:07:24 24 Q. Did you become aware that Philip Morris believed
03:07:26 25 that it was your contractual obligation to Philip

03:07:30 1 Morris to testify and answer questions and not invoke
03:07:34 2 your fifth amendment privilege in a deposition?
03:07:36 3 MR. GORDON: Same objection.
03:07:42 4 A. Same response.
03:07:42 5 MR. NIELDS: Are you getting close?
03:07:50 6 MR. WEBB: Yes.
03:07:52 7 Could I ask the court reporter to mark this as
03:07:54 8 Defendant Exhibit 1202.
9 (Plaintiff's Deposition Exhibit 1202 was
10 marked for identification.)
03:08:18 11 BY MR. WEBB:
03:08:20 12 Q. Dr. Osdene, let me show you the next exhibit,
03:08:22 13 which will be my last exhibit, which is marked
03:08:24 14 Defendants' Exhibit 1202. I'd just ask you to
03:08:30 15 examine the letter, and I'll ask you this question,
03:08:32 16 simple question. Is this a letter that on the face

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03:08:36 17 of it appears to be dated May 6, 1997, from the law
03:08:40 18 firm -- the law firm of Arnold & Porter, addressed to
03:08:44 19 your lawyer, John W. Nields, at his Washington, D.C.
03:08:44 20 address?
03:08:46 21 MR. GORDON: Same objections including my
03:08:50 22 objections as to use of the preceding document.
03:08:50 23 A. Same response.
03:08:58 24 Q. And, Dr. Osdene, is this a letter that was
03:09:00 25 written so that Philip Morris could make certain that

03:09:04 1 you understood that Philip Morris believed that your
03:09:08 2 invocation of the fifth amendment in a deposition
03:09:10 3 would violate a contractual obligation that you had
03:09:12 4 with Philip Morris?
03:09:14 5 MR. GORDON: Same objections.
03:09:14 6 A. Same response.
03:09:20 7 Q. Let me read the first paragraph of the letter to
03:09:22 8 you, Dr. Osdene. I'm now reading after the
03:09:24 9 salutation "Dear John."
03:09:28 10 "You advised us that your client, Dr. Thomas
03:09:30 11 Osdene, intends to invoke his Fifth Amendment
03:09:34 12 privilege against self-incrimination at his
03:09:38 13 deposition scheduled for May 13th, 1997 in the above
03:09:42 14 referenced case and at other depositions that are or
03:09:46 15 may be scheduled in civil litigation against the
03:09:48 16 Philip Morris Companies. Dr. Osdene has made this
03:09:54 17 decision to assert his privilege despite Philip
03:09:58 18 Morris' request, emphatically expressed to you in my

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letter of April 23rd, 1997, that Dr. Osdene testified fully and truthfully at his deposition." Do you see the words written that I've just read to you on this -- on this document?

MR. NIELDS: He is drawing your attention to paragraph one.

A. I see the words.

Q. So you became aware on or about May 6th that Philip Morris was reiterating how emphatic it felt that you not invoke your fifth amendment?

MR. GORDON: Same objections.

A. Same response.

Q. Look at the second paragraph. Philip Morris states, goes on to state in the second paragraph, I now read and I quote, "In our view, Dr. Osdene's invocation of the Fifth would constitute a material breach of his severance agreement with Philip Morris executed on May 7th, 1992, a copy of which is enclosed. In the severance agreement, Dr. Osdene contracted to cooperate fully with Philip Morris in the defense of any matter with which Dr. Osdene was involved during -- during his employment and to 'make [him]self available as required by' Philip Morris or its counsel. Severance Agreement, paragraph 13. By agreeing to testify when being requested to do so by Philip Morris, Dr. Osdene, we believe, contractually waived his right to refuse to testify based on any otherwise available privilege, including his Fifth

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03:11:28 22 Amendment privilege."

03:11:30 23 Do you see the words that are set forth in that

03:11:32 24 paragraph as I've read them to you that appear on the

03:11:34 25 face of this document?

03:11:34 1 MR. NIELDS: He is calling your attention

03:11:36 2 to the second paragraph in the letter.

03:11:38 3 A. I see the words.

03:11:40 4 Q. My question is: Dr. Osdene, is it correct to

03:11:42 5 say that at or about the time of this letter, you

03:11:46 6 became aware that Philip Morris believed that you

03:11:48 7 would be in violation of the severance agreement if

03:11:52 8 you invoke the fifth amendment in a deposition and

03:11:54 9 did not answer questions completely and truthfully?

03:11:56 10 MR. GORDON: Same objections.

03:11:58 11 A. Same response.

03:12:00 12 MR. NIELDS: Are we getting real close?

03:12:02 13 MR. WEBB: We are there. I mean, I've got

03:12:04 14 two or three questions left.

03:12:04 15 BY MR. WEBB:

03:12:14 16 Q. Dr. Osdene, did you become aware that because of

03:12:18 17 Philip Morris' view that you had no right to invoke

03:12:22 18 the fifth amendment but was aware you were going to

03:12:24 19 go ahead and do so anyway, that Philip Morris went on

03:12:28 20 this in this letter to invoke another paragraph of

03:12:32 21 the -- of the agreement you had in which they invoked

03:12:34 22 their right to arbitrate this issue?

03:12:36 23 A. Same response.

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03:12:40 24 Q. Are you aware today that Philip Morris is
03:12:44 25 attempting to arbitrate this issue of your right to
03:12:48 1 take the fifth amendment in a deposition in light of
03:12:48 2 this contractual agreement?
03:12:52 3 MR. GORDON: Same objection.
03:12:54 4 A. Same response, same response.
03:13:06 5 Q. Dr. Osdene, are you aware that your insistence
03:13:08 6 on invoking the fifth amendment in response to my
03:13:14 7 questions has the effect of denying Philip Morris and
03:13:16 8 the other tobacco company defendants in this case the
03:13:20 9 opportunity to conduct an effective examination of
03:13:24 10 you in this deposition and thereby obtain truthful
03:13:26 11 answers that would be favorable to Philip Morris in
03:13:28 12 this litigation?
03:13:30 13 MR. GORDON: Same objections.
03:13:30 14 A. Same response.
03:13:34 15 MR. WEBB: One second.
03:13:40 16 I have no more questions.
03:13:42 17 MS. De KOCK: I have a few questions but
03:13:46 18 would like to take a short break to get a couple
03:13:48 19 exhibit numbers.
03:13:52 20 THE REPORTER: Off the record.
03:13:52 21 (Recess taken from 1:23 to 1:25 p.m.)
03:15:14 22 (Interruption by the reporter; discussion
03:15:22 23 off the stenographic record.)
03:15:22 24 EXAMINATION
25 BY MS. De KOCK:

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03:15:26 Q. My name is Paula De Kock, I represent The
03:15:26 Council for Tobacco Research.
03:15:32 I would like to show you a document, number 15
03:15:38 -- this one is 1523, yes. I'm sorry, that's my
03:15:42 copy. I'm sorry. There we go. Sorry.
03:15:46 And if you will look at the attachment, second
03:15:54 page, which is a memorandum dated 11/29, 1977.
03:15:56 Is it a fair interpretation of this document
03:15:58 read in its totality that the industry did not in
03:16:00 fact direct the research effort of The Council for
03:16:02 Tobacco Research.
03:16:04 MR. GORDON: Object to form, leading,
03:16:06 document speaks for itself.
03:16:10 A. On advice of counsel, I respectfully decline to
03:16:14 answer based on my fifth amendment privilege against
03:16:16 self-incrimination because there is an ongoing
03:16:18 parallel criminal investigation.
03:16:26 Q. I direct your attention to paragraph 3 where
03:16:30 there is a quotation mark, "It is my strong feeling
03:16:32 that with the progress that has been claimed, we are
03:16:38 digging our own grave," and then it goes on to urge,
03:16:40 "I strongly urge that the whole relationship of our
03:16:44 Company to CTR be carefully reviewed." Is this the
03:16:48 only recommendation in this memorandum?
03:16:50 A. Same response.

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03:16:52 1 Q. Is there any recommendation in this memorandum
03:16:54 2 that any research by CTR be suppressed?
03:16:56 3 A. Same response.
03:17:04 4 Q. Now if I may draw your attention to document --
03:17:12 5 to Exhibit No. 1525, and that is a memorandum dated
03:17:18 6 November 13, 1978, about a year later.
03:17:22 7 Is it a fair interpretation of this document,
03:17:24 8 again taken in its totality, that the industry's
03:17:28 9 ability to control CTR's research had not increased
03:17:30 10 from about a year earlier?
03:17:30 11 MR. GORDON: Same objection.
03:17:32 12 A. Same response.
03:17:36 13 Q. As a presumed representative of the tobacco
03:17:40 14 industry, did you have control over CTR as of the
03:17:40 15 date of this document?
03:17:42 16 A. Same response.
03:17:44 17 Q. Again as a presumed representative of the
03:17:48 18 tobacco industry, did you assume control of CTR's
03:17:52 19 research as a result of the recommendations set forth
03:17:54 20 in this memorandum?
03:17:54 21 A. Same response.
03:17:56 22 Q. To your knowledge did anyone else do so?
03:17:58 23 A. Same response.
03:18:02 24 Q. CTR in fact did not redirect its research
03:18:06 25 program through contracts rather than grants, did it?

03:18:08 1 A. Same response.
03:18:18 2 Q. Now if you would look at document -- at Exhibit

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03:18:24 3 No. 1538, page -- I believe it's page 3, the bottom
03:18:32 4 of page 3. It's really hard to read. Where it says
03:18:34 5 "COUNCIL FOR TOBACCO RESEARCH," I would like to draw
03:18:38 6 your attention to something that Mr. Gordon did not
03:18:44 7 read, and it's the third line -- sorry -- beginning
03:18:48 8 in the second line, "the SAB." First of all, the SAB
03:18:50 9 stands for the Scientific Advisory Board; correct?
03:18:50 10 A. Same response.
03:18:54 11 Q. And the function of the Scientific Advisory
03:18:56 12 Board at CTR was to approve grants; correct?
03:18:58 13 A. Same response.
03:19:02 14 Q. Now does the document not say "the SAB was
03:19:04 15 indeed INDEPENDENT"? Do you see that line?
03:19:08 16 MR. NIELDS: She is drawing your attention
03:19:08 17 to this language.
03:19:10 18 Q. Do you see that language?
03:19:12 19 A. Yes, I saw the line.
03:19:16 20 Q. The next sentence quotation marks is, "We had no
03:19:18 21 access to them." Do you see that sentence?
03:19:20 22 MR. NIELDS: She is drawing your attention
03:19:22 23 to this line right here.
03:19:22 24 A. I see the line.
03:19:26 25 Q. Is this something you said to Mr. Kluger at the

03:19:26 1 time of your interview?
03:19:28 2 A. Same response.
03:19:32 3 Q. And if you -- if you felt free to testify today,
03:19:32 4 would you not testify to the same effect?

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03:19:34 5 A. Same response.

03:19:38 6 MS. De KOCK: Thank you. I have other

03:19:38 7 questions.

03:19:40 8 MR. NIELDS: Thanks. Counselor?

03:19:42 9 MR. GORDON: Wait, wait, wait. If we are

03:19:46 10 done, that concludes the examination on behalf of the

03:19:48 11 state of Minnesota and Blue Cross/Blue Shield of

03:19:50 12 Minnesota. Our deposition is terminated. I'm

03:19:54 13 leaving the room if the Arch plaintiffs are going to

03:19:58 14 go forward. I need a few moments to clear my stuff

03:19:58 15 out.

03:20:00 16 MR. SHUB: We want to get the witness out.

03:20:04 17 Is there any reason, Mr. Gordon you can't be in the

03:20:04 18 room while I question?

03:20:06 19 MR. GORDON: Yes. We are not going to be

03:20:10 20 in the room while the state of Pennsylvania or Arch

03:20:12 21 plaintiffs conduct any examination.

03:20:12 22 MR. NIELDS: Would it be objectionable --

03:20:14 23 he only has six questions, he tells me -- if you

03:20:16 24 leave the room and --

03:20:18 25 MR. GORDON: I'll stand outside the room.

03:20:18 1 That's fine.

03:20:20 2 Let the record reflect that I am leaving the

03:20:28 3 room. And also that this is the end of the Minnesota

03:20:32 4 transcript, so it's a separate transcript prepared.

03:20:34 5 MR. SHUB: There is no separate

03:20:34 6 transcript.

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03:20:36 7 MR. GORDON: We don't want this examination
03:20:38 8 on the transcript that's prepared for the state of
03:20:38 9 Minnesota.
03:20:40 10 MR. SHUB: Why don't we get this witness
03:20:46 11 out of here and we can argue about it later.
12 (Mr. Gordon exits room.)
13 ADVERSE EXAMINATION
14 BY MR. SHUB:
03:20:48 15 Q. Dr. Osdene, good afternoon. My name is Jonathan
03:20:52 16 Shub. I represent plaintiffs in a case called Arch,
03:20:54 17 et al v. United States Tobacco Company, et al,
03:20:58 18 pending in the Eastern District of Pennsylvania,
03:21:00 19 federal court. I just have a few questions for you.
03:21:04 20 Dr. Osdene, did Philip Morris prior to the
03:21:08 21 release of the 1964 surgeon general report conduct
03:21:14 22 research regarding a causal link between smoking and
03:21:14 23 disease?
03:21:16 24 A. On advice of counsel, I respectfully decline to
03:21:18 25 answer based on my fifth amendment privilege against

03:21:20 1 self-incrimination because there is an ongoing
03:21:24 2 parallel criminal investigation.
03:21:26 3 MR. SHUB: Counsel, in subsequent questions
03:21:30 4 I'll assume the answer "same response" is repeated
03:21:32 5 just as it was just now.
03:21:34 6 MR. NIELDS: Agreed.
03:21:34 7 BY MR. SHUB:
03:21:38 8 Q. Did this research indicate a causal link between
03:21:38 9 smoking and disease?

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03:21:40 10 A. Same response.
03:21:42 11 Q. Did Philip Morris ever deny that there was a
03:21:44 12 causal link between smoking and disease when their
03:21:46 13 own research indicated there was such a link?
03:21:52 14 MR. WEBB: Objection.
03:21:52 15 A. Same response.
03:21:52 16 (Interruption by the reporter.)
03:21:54 17 Q. Did Philip Morris' research indicate that
03:21:58 18 nicotine was an addictive substance prior to the
03:22:02 19 release of 1988 surgeon general's report?
03:22:02 20 MR. WEBB: Objection.
03:22:04 21 A. Same response.
03:22:08 22 Q. Did Philip Morris conduct research at IMBIFO in
03:22:10 23 order to avoid disclosure of that research in the
03:22:10 24 United States?
03:22:12 25 MR. WEBB: Objection.

03:22:12 1 A. Same response.
03:22:14 2 Q. Did Philip Morris consciously not attempt to
03:22:16 3 manufacture a safer cigarette out of concern that
03:22:20 4 this would be used against it in lawsuits brought by
03:22:20 5 smokers?
03:22:22 6 MR. WEBB: Objection.
03:22:22 7 A. Same response.
03:22:26 8 Q. Finally, Dr. Osdene, did Philip Morris
03:22:28 9 manufacture cigarettes with targeted levels of
03:22:30 10 nicotine in order to keep smokers addicted?
03:22:32 11 MR. WEBB: Objection.

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03:22:32 12 A. Same response.

03:22:34 13 MR. SHUB: I have no further questions.

03:22:38 14 Thank you for the time.

03:22:40 15 THE REPORTER: Anything else for the

03:22:44 16 record? Off the record, please.

17 (Deposition concluded at approximately

18 1:37 o'clock p.m.)

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1 C E R T I F I C A T E

2 I, David A. Campeau, hereby certify that I

3 am qualified as a verbatim shorthand reporter; that I

4 took in stenographic shorthand the foregoing

5 deposition of THOMAS S. OSDENE at the time and place

6 aforesaid; that the foregoing transcript consisting

7 of pages 105 - 266 is a true and correct, full and

8 complete transcription of said shorthand notes, to

9 the best of my ability; that the noticing party has

10 been charged for the original transcript, and that

11 ordering parties have been charged the same rate for

12 such copies of the transcript.

13 Dated at Lino Lakes, Minnesota, this 18th

14 day of June, 1997.

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SIGNATURE PAGE

I, THOMAS S. OSDENE, the deponent, hereby certify that I have read the foregoing transcript consisting of pages 105-266, and that said transcript is a true and correct, full and complete transcription of my deposition, except per the attached corrections, if any.

(Please check one.)

_____ Yes, changes were made per the attached (no.) _____ pages.

_____ No changes were made.

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_____

THOMAS S. OSDENE

Sworn and subscribed to before me this day of , 199__.

_____

Notary Public

My Commission expires: (DAC)

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